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Transcript of Julie Kelly

Date: October 15, 2018
Case: Barger -v- First Data Corporation, et al.

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Transcript of Julie Kelly
Conducted on October 15, 2018

1 (1 to 4)

1	UNITED STATES DISTRICT COURT	1	(Thereupon, Kelly Exhibit 13, a 1-page
2	EASTERN DISTRICT OF NEW YORK	2	letter dated 6/27/18 to Gary Eidelman
3	* * *	3	from Julie Kelly, was marked for
4	STEVEN B. BARGER, an	4	purposes of identification.). 61
5	individual,	5	(Thereupon, Kelly Exhibit 14, a
6	Plaintiff,	6	multi-page Motion for Sanctions, was
7	vs. CASE NO. 1:17-CV-4869	7	marked for purposes of identification.) 71
8	FIRST DATA CORPORATION, a	8	(Thereupon, Kelly Exhibit 15, a 2-page
9	Delaware corporation; and	9	Defendants' Initial Disclosures, was
10	FRANK BISIGNANO, DAN	10	marked for purposes of identification.) 71
11	CHARRON, ANTHONY MARINO,	11	(Thereupon, Kelly Exhibit 16, 2 2-sided
12	KAREN WHALEN, and RHONDA	12	pages of e-mails, the top dated 7/13/18
13	JOHNSON, each an individual,	13	to Gillian Cooper from Julie Kelly, was
14	Defendants.	14	marked for purposes of identification.) 89
15	* * *	15	(Thereupon, Kelly Exhibit 17, 2 2-sided
16	Deposition of JULIE KELLY, Witness	16	pages of e-mails, the top dated 7/20/18
17	herein, called by the Defendants for	17	to Timothy Callahan from Julie Kelly,
18	cross-examination pursuant to the Rules of Civil	18	was marked for purposes of
19	Procedure, taken before me, Lisa M. Conley	19	identification.). 100
20	Yungblut, a Notary Public within and for the State	20	(Thereupon, Kelly Exhibit 18, a 1-page
21	of Ohio, at the Potter Stewart Courthouse, 100	21	e-mail dated 7/24/18 to Barry Levin
22	East Fifth Street, Room 203, Cincinnati, Ohio, on	22	from Julie Kelly, was marked for
23	Monday, the 15th of October, 2018, at 12:07 p.m.	23	purposes of identification.). 107
24	* * *	24	
25		25	
1	EXAMINATION CONDUCTED	2	
2	BY MS. COOPER:	8	
3			
4	EXHIBITS MARKED	PAGE	
5	(Thereupon, Kelly Exhibit 5, a 1-page		1 (Thereupon, Kelly Exhibit 19, a 1-page
6	letter dated 5/16/18 to Julie Kelly		2 e-mail dated 7/31/18 to Julie Kelly
7	from Gary Eidelman, with attachment,		3 from Gillian Cooper, was marked for
8	was marked for purposes of		4 purposes of identification.). 116
9	identification.). 26		5 (Thereupon, Kelly Exhibit 20, 1 page of
10	(Thereupon, Kelly Exhibit 9, a 1-page		6 e-mails, the top dated 8/2/18 to
11	letter dated 5/24/18 to Gary Eidelman		7 Gillian Cooper from Julie Kelly, was
12	from Julie Kelly, was marked for		8 marked for purposes of identification.) 118
13	purposes of identification.). 32		9 (Thereupon, Kelly Exhibit 6, a 1-page
14	(Thereupon, Kelly Exhibit 10, a 1-page		10 letter dated 8/14/18 to Julie Kelly
15	letter dated 5/25/18 to Julie Kelly		11 from Gillian Cooper, with attachment,
16	from Gary Eidelman, was marked for		12 was marked for purposes of
17	purposes of identification.). 39		13 identification.). 124
18	(Thereupon, Kelly Exhibit 11, a 1-page		14 (Thereupon, Kelly Exhibit 21, a 4-page,
19	letter dated 5/29/18 to Gary Eidelman		15 2-sided Request for Order Granting
20	from Julie Kelly, was marked for		16 Motion for Sanctions, was marked for
21	purposes of identification.). 43		17 purposes of identification.). 126
22	(Thereupon, Kelly Exhibit 12, a 1-page,		18 (Thereupon, Kelly Exhibit 7, a 2-page,
23	handwritten letter dated 6/25/18 to		19 2-sided Order, was marked for purposes
24	Gary from Julie Kelly, was marked for		20 of identification.). 149
25	purposes of identification.). 58		21 (Thereupon, Kelly Exhibit 22, a 2-page,
			22 2-sided e-mail dated 10/2/18 to Gary
			23 Eidelman from Julie Kelly, was marked
			24 for purposes of identification.). 159
			25

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2 (5 to 8)

1 (Thereupon, Kelly Exhibit 8, a 2-page,	5	1 APPEARANCES:
2 2-sided Notice of Electronic Filing		2 On behalf of the Plaintiff:
3 dated 10/9/18, was marked for purposes		3 The Law Office of Shawn Shearer
4 of identification.). 162		4 By: Shawn Shearer Attorney at Law 3839 McKinney Avenue Suite 155-254 Dallas, Texas 75204 972-803-4499 shawn@shearerlaw.pro
5 (Thereupon, Kelly Exhibit 23, a 1-page		8
6 document titled Confidential, from		9 On behalf of the Defendants:
7 Julie Kelly, Bates SBB-00780, was		10 Saul Ewing Arnstein & Lehr, LLP
8 marked for purposes of identification.) 169		11 By: Gillian A. Cooper Attorney at Law 650 College Road East Suite 4000 Princeton, New Jersey 08540-6603 609-452-5021 gillian.cooper@saul.com
9 (Thereupon, Kelly Exhibit 24, multiple		12 and
10 documents, the top being a 4-page		13 Jackson Lewis
11 e-mail dated 10/2/18 to Gary Eidelman		14
12 from Julie Kelly, was marked for		15
13 purposes of identification.). 187		16
14 (Thereupon, Kelly Exhibit 25, a		17
15 multi-page document reflecting from FDC		18 By: Matthew R. Byrne Attorney at Law 2600 PNC Center 201 East 5th Street Cincinnati, Ohio 45202 513-898-0050 Matthew.Byrne@jacksonlewis.com
16 Litigation to Julie Kelly, was marked		19
17 for purposes of identification.). 189		20
18 (Thereupon, Kelly Exhibit 26, a 1-page		21
19 document reflecting Additional		22
20 harassment/threats, was marked for		23 ALSO PRESENT:
21 purposes of identification.). 192		24 Robin Ording Jill Poole (by phone) Lori Graesser (by phone)
22 (Thereupon, Kelly Exhibit 27, a 3-page,		25 * * *
23 handwritten document dated 11/10/16,		
24 was marked for purposes of		
25 identification.). 194		
6	8	
1 (Thereupon, Kelly Exhibit 28, 1 page of		1 JULIE KELLY
2 e-mails, the top dated 1/13/17 to Julie		2 of lawful age, Witness herein, having been first
3 Kelly from Robin Ording, was marked for		3 duly sworn as hereinafter certified, was examined
4 purposes of identification.). 196		4 and deposed as follows:
5 (Thereupon, Kelly Exhibit 29, a 1-page		5 CROSS-EXAMINATION
6 Invoice dated 10/15/18, was marked for		6 BY MS. COOPER:
7 purposes of identification.). 199		7 Q. Good afternoon, Ms. Kelly. My name
8		8 is Gillian Cooper. I'm an attorney at Saul Ewing
9		9 Arnstein & Lehr. We represent First Data
10		10 Corporation in this matter. We also represent the
11		11 individual defendants who are: Frank Bisignano,
12		12 Dan Charron, Anthony Marino, Karen Whalen, and
13		13 Rhonda Johnson. We are here today for your
14		14 deposition, so I just want to go over a couple of
15		15 procedural things and some ground rules. So in
16		16 the room with us today, we have Robin Ording, who
17		17 is the corporate representative for First Data, so
18		18 she's here in that capacity. We also have with us
19		19 Matthew Byrne from Jackson Lewis; he is local
20		20 counsel here in Ohio. On the phone, we have Lori
21		21 Graesser and Jill Poole, who are in-house counsel
22		22 at First Data.
23		23 And Mr. Shearer is the plaintiff's,
24		24 Steve Barger's, attorney. Is it correct that he
25		25 does not represent you in connection with this

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3 (9 to 12)

<p>1 deposition?</p> <p>2 A. That's correct.</p> <p>3 Q. Okay.</p> <p>4 MR. SHEARER: But I want to make</p> <p>5 clear for the record -- this is Shawn Shearer of</p> <p>6 the law office of Shawn Shearer, counsel for the</p> <p>7 plaintiff, Steve Barger -- that I am also counsel</p> <p>8 for Ms. Kelly in connection with her complaint and</p> <p>9 charge of discrimination that has been filed with</p> <p>10 the Ohio Civil Rights Commission currently being</p> <p>11 investigated, right to sue letter has not yet been</p> <p>12 issued, and so that representation needs to be</p> <p>13 recognized.</p> <p>14 MS. COOPER: Okay. So it's noted for</p> <p>15 the record.</p> <p>16 BY MS. COOPER:</p> <p>17 Q. So also here in the room is</p> <p>18 Ms. Yungblut. Am I saying that correctly? Okay.</p> <p>19 She is the court reporter. It is her job to take</p> <p>20 down everything that we say today. So for her</p> <p>21 purposes and for her sanity, what we try to do is</p> <p>22 not talk over one another, because she can't write</p> <p>23 down what we're saying if we're both talking at</p> <p>24 the same time. So I will do my very best to allow</p> <p>25 you to finish what you're saying, and I ask that</p>	9	<p>1 Q. Do you understand that your testimony</p> <p>2 is under oath and subject to the penalty of</p> <p>3 perjury?</p> <p>4 A. Yes.</p> <p>5 Q. If you don't understand one of my</p> <p>6 questions, just let me know, and I can rephrase</p> <p>7 it. If you need a break, let me know, and we will</p> <p>8 take it. There is a court order that sets forth</p> <p>9 what breaks will take place today. The order,</p> <p>10 which I will go through a little bit more</p> <p>11 specifically in a few moments, provides for two</p> <p>12 5-minute breaks and then a 15-minute break.</p> <p>13 A. Okay.</p> <p>14 Q. The one thing I would like to note,</p> <p>15 is that if I've asked a question, that you answer</p> <p>16 the question before we take the break so that</p> <p>17 there's no pending question before a break.</p> <p>18 A. Got it.</p> <p>19 Q. Are you currently taking any</p> <p>20 medication that would affect your ability to</p> <p>21 understand and answer my questions today?</p> <p>22 A. I am taking medication, but I don't</p> <p>23 believe it would impact.</p> <p>24 Q. Okay. That's fine. Is there any</p> <p>25 reason that you would not be able to give full,</p>	11
<p>1 you do the same and allow me to finish my question</p> <p>2 before you begin to answer.</p> <p>3 I also ask -- she can't write down or</p> <p>4 can't record nonverbal cues. So if you were to</p> <p>5 shake your head yes or no, she can't record that</p> <p>6 down, so I just ask that all of your answers be</p> <p>7 verbal --</p> <p>8 A. Understood.</p> <p>9 Q. -- so that the record is clear.</p> <p>10 Okay. So we're going to start with some</p> <p>11 introduction. I'm going to ask that you state</p> <p>12 your name and your home address for the record.</p> <p>13 A. Julie Kelly. 823 Dorgene Lane,</p> <p>14 Cincinnati, Ohio 45244.</p> <p>15 Q. Okay. You understand that you are</p> <p>16 under oath today?</p> <p>17 A. Yes.</p> <p>18 Q. Do you understand that that means</p> <p>19 that you are sworn to tell the truth?</p> <p>20 A. Yes.</p> <p>21 Q. You understand that even though we</p> <p>22 are in an informal setting, your testimony has the</p> <p>23 same force and effect as if we were in front of a</p> <p>24 judge and a jury?</p> <p>25 A. Yes.</p>	10	<p>1 complete, and truthful answers to my questions</p> <p>2 today?</p> <p>3 A. Not that I know of.</p> <p>4 Q. What did you do to prepare for</p> <p>5 today's deposition?</p> <p>6 A. Well, I read what I could on PACER.</p> <p>7 I do have a regular public PACER account.</p> <p>8 Q. Okay.</p> <p>9 A. However, I do not pay for any</p> <p>10 documents. So that's really my knowledge. I</p> <p>11 would like you to give me a summary of the charge</p> <p>12 or the case of Steve's.</p> <p>13 Q. So we will -- I will ask you very</p> <p>14 specific questions. Because this is your</p> <p>15 deposition, you are not permitted to ask</p> <p>16 questions. If you have a question about a</p> <p>17 question that I have asked or need some context,</p> <p>18 you can ask me that.</p> <p>19 But I want to talk -- you said you</p> <p>20 checked PACER. What exactly did you look at?</p> <p>21 A. Just the docket listings.</p> <p>22 Q. The docket listings for what?</p> <p>23 A. For the Barger case.</p> <p>24 Q. For the case that's pending in New</p> <p>25 York?</p>	12

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4 (13 to 16)

	13		15
1 A. Yes.		1 Q. Okay. Did you discuss the deposition	
2 Q. Okay. So you say you have a public		2 at all during --	
3 access account?		3 A. No.	
4 A. Um-hmm.		4 Q. -- those conversations?	
5 Q. Were you able to see any of the		5 Okay. What did you discuss?	
6 filings in the New York case?		6 A. Just that, you know, I might need a	
7 A. I think the public ones I could pay		7 ride and we're both going to the same place.	
8 for, but I don't have the means to pay for.		8 Q. Okay. When did that conversation	
9 Q. Okay. So you didn't actually click		9 take place?	
10 the link and pull up or download any of the		10 A. This morning, quite honestly.	
11 documents?		11 Q. So you did not know how you were	
12 A. No. I think it charges \$5.50 or -- I		12 getting to today's deposition until this morning?	
13 don't know.		13 A. No. You know, at first I was going	
14 Q. Okay. Did you do anything else to		14 to have my oldest daughter bring me, quite	
15 prepare for today's deposition?		15 honestly.	
16 A. I did look for documents as the		16 Q. Okay. Then, how did that change?	
17 subpoena --		17 A. She was out with her friends last	
18 Q. Okay, okay. We'll talk about the		18 night and didn't get home until earlier this	
19 documents in a couple of minutes. Did you meet		19 morning.	
20 with any attorney to talk about --		20 Q. Okay.	
21 A. I can't afford to have another		21 A. Does that -- sorry.	
22 attorney, quite honestly, so no.		22 Q. This morning when you realized that	
23 Q. Okay. Did you talk to Mr. Shearer		23 your daughter would not drive you today, did you	
24 about today's deposition?		24 reach out to Mr. Shearer?	
25 A. I talked to Mr. Shearer about my		25 A. I did.	
1 individual case.	14		16
2 Q. Okay. I'm not asking about your		1 Q. Okay. Was it via text or via phone?	
3 charge.		2 A. I just called him on the phone, quite	
4 A. Right. So no.		3 honestly. We're both going to the same place, so	
5 Q. Okay. So you did not talk to him		4 that's it.	
6 about today's deposition?		5 Q. Prior to today's conversation, did	
7 A. No.		6 you have any conversations with Mr. Shearer about	
8 Q. Did you arrive with Mr. Shearer		7 today's deposition?	
9 today?		8 A. No.	
10 A. He did bring me because I am taking		9 MR. SHEARER: I'm objecting to the	
11 medication.		10 extent that this requires any privileged	
12 Q. Okay. So were you not able to drive?		11 conversation.	
13 A. You know, I may be able to drive, but		12 MS. COOPER: Noted. We're talking	
14 I'm taking precautions right now.		13 about today's deposition. We're not talking	
15 Q. Okay. Because you're concerned about		14 about --	
16 your ability to drive, does that have any effect		15 MR. SHEARER: This is where we're	
17 on your ability to answer questions?		16 going to have an issue today because today's	
18 A. I don't think so.		17 deposition and the proceedings that got us here	
19 Q. Okay. So you arranged with		18 are exactly going to be a part of the claim that's	
20 Mr. Shearer that he would drive you to today's		19 pending before the OCRC, and it's also the claim	
21 deposition?		20 that is part of the amended complaint, which is	
22 A. Um-hmm.		21 the behavior of Saul Ewing and First Data from the	
23 Q. So did you speak to him about		22 time the first subpoena was noticed until today is	
24 setting -- or about arranging that?		23 part of the claim. So any conversation regarding	
25 A. Yes.		24 how that impacts her claim is privileged and she	
		25 can't answer it.	

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5 (17 to 20)

	17		19
1	MS. COOPER: But you don't represent	1	Q. Besides Mr. Shearer, did you talk to
2	her in connection with this deposition.	2	anyone else about this deposition?
3	MR. SHEARER: No, no. Let's look --	3	A. My husband.
4	if you want to do this now, it says any person,	4	Q. Okay. What were those conversations?
5	any person can raise a claim of privilege in this	5	A. Oh, just prepping me. He's done them
6	deposition. It doesn't have to be a party, it	6	before, I've never done them.
7	doesn't have to be counsel for the witness, any	7	Q. How was he prepping you?
8	person can.	8	A. Just general conversation.
9	MS. COOPER: What is the privilege?	9	Q. What sort of questions?
10	MR. SHEARER: The privilege is any	10	A. You look people in the eye, you
11	conversations that I have had with her about this	11	answer the questions directly, those types of
12	deposition or about what has led up to this	12	things.
13	deposition and how it impacts her case and her	13	Q. Okay. What have you told your
14	claims with the OCRC is privileged.	14	husband about this deposition and about
15	MS. COOPER: You do not represent	15	Mr. Barger's case?
16	Ms. Kelly in connection with this deposition.	16	A. Well, you know, I don't know much
17	MR. SHEARER: It doesn't matter.	17	about the case other than what I've read on PACER,
18	Read --	18	like I previously said to you, so he's going to
19	MS. COOPER: It does matter.	19	know even less than that. You know, all we really
20	MR. SHEARER: Rule 30(c)(1) says any	20	know is there's -- what is it listed as -- an FMLA
21	person in a deposition, any person, it doesn't say	21	case in the federal court.
22	any party, it doesn't say a counsel.	22	Q. Did you have any other conversations
23	MS. COOPER: Right, but there has to	23	with -- besides your husband, with anyone else
24	be an attorney-client relationship.	24	about today's deposition?
25	MR. SHEARER: There is an	25	A. No, ma'am.
	18		20
1	attorney-client relationship.	1	Q. Okay. Did you have any conversations
2	MS. COOPER: Not in connection with	2	with anyone from Mr. Shearer's office about
3	this deposition.	3	today's deposition or Mr. Barger's claim?
4	MR. SHEARER: Well, then, ask her	4	A. No, ma'am.
5	about the deposition, but there's an	5	Q. Okay. What documents did you review
6	attorney-client -- the privilege doesn't have to	6	for today's deposition?
7	apply to this deposition. The privilege applies	7	A. Well, I just read online on PACER the
8	to her claim.	8	dockets, so they weren't documents. It was
9	MS. COOPER: I'm not asking about her	9	just --
10	claim.	10	Q. Okay. Did you review any e-mails,
11	MR. SHEARER: Well, to the extent	11	any e-mails that you might have had with
12	that you ask her about conversations about this	12	Mr. Barger or Mr. Shearer about today's deposition
13	deposition, they impact her claim.	13	or any e-mails you might have had with anyone from
14	MS. COOPER: So now you do represent	14	my firm?
15	her in connection with this deposition?	15	A. I have some e-mails from you I looked
16	MR. SHEARER: I represent her in	16	at.
17	connection with her claim against First Data.	17	Q. Okay.
18	MS. COOPER: We're not going to talk	18	A. And I think maybe one from
19	about that.	19	Mr. Eidelman.
20	MR. SHEARER: Well, we are talking	20	Q. Okay. All right. Have you ever
21	about that. This deposition is her claim.	21	given a deposition before?
22	MS. COOPER: Mr. Shearer, your	22	A. No.
23	objection is noted for the record. We will	23	Q. Have you ever testified in court
24	proceed.	24	before?
25	BY MS. COOPER:	25	A. No.

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6 (21 to 24)

	21	23
1 Q. Have you ever been a party to a 2 lawsuit before?		1 questions I'm going to be asking you about are 2 about things that have been filed in this 3 miscellaneous action, and we're going to go 4 through some of the documents you drafted and 5 filed and then some of the responses. And then 6 we're going to talk about your relationship with 7 Mr. Barger when he was head of the sales 8 transformation group and we'll talk a little bit 9 about that. I want to make it very clear that we 10 are not talking about anything that relates to 11 your charge that's currently pending with the Ohio 12 Commission of Human Rights.
3 A. No.		13 What is your e-mail address?
4 Q. Have you ever been a party to a 5 criminal proceeding?		14 A. J U L underscore Kelly at mac dot 15 com. And I also have one at J U L underscore Glad 16 at mac dot com.
6 A. No.		17 Q. Why the two e-mail addresses?
7 Q. Okay. We're just going to go through 8 some background questions, let me get to know you 9 a little bit more. Did you graduate from high 10 school?		18 A. The original Glad is 20-plus years 19 old, and I've just never changed it. So the other 20 one is an alias, it just goes with the same 21 account.
11 A. Yes.		22 Q. So if someone were to e-mail the 23 J U L underscore Glad e-mail account, does that 24 get forwarded to --
12 Q. When did you graduate?		25 A. It's the same account.
13 A. 1996.		
14 Q. Okay. Did you go to college?	22	
15 A. I did.		24
16 Q. Where did you go?		1 Q. They have two unique e-mail 2 addresses, though, so they're two separate 3 accounts?
17 A. I went to Catawba College in North 18 Carolina, and then I also did work at FIU, Florida 19 International University. And then I also did 20 lots of work through Harvard Business School. I 21 did courses through there and various other 22 professional development and technical courses.		4 A. No.
23 Q. Okay. So when you say worked, you 24 mean you were employed by those institutions or 25 you did school work, coursework?		5 Q. How does that work, how are they the 6 same; if they have two separate unique e-mail 7 addresses, how is it the same account?
1 A. I did coursework, and most of those 2 were paid for and sponsored by First Data.		8 A. I don't know how it works, quite 9 honestly, but it's similar for First Data, they 10 have all of these aliases. So I had e-mail 11 addresses of Julie K at First Data, I also had 12 Julie dot Kelly at First Data, also Julie dot 13 Glad, at all of these different -- but they go to 14 the same account.
3 Q. Okay. Do you have a bachelor's 4 degree?		15 Q. They might go to the same in-box, but 16 they're two separate e-mail addresses?
5 A. No.		17 A. Yeah.
6 Q. Okay. Do you have an associate's 7 degree?		18 Q. Okay. Does anybody else have access 19 to either of those e-mails?
8 A. No.		20 A. (Shaking head.)
9 Q. Are you currently employed?		21 Q. Have you provided the password?
10 A. No.		22 A. No.
11 Q. Who was your last employer?		23 Q. Okay. Does anybody else check either
12 A. First Data.		24 of those e-mail account inboxes?
13 Q. Okay. And when did that employment 14 end?		25 A. Not that I'm aware of.
15 A. That ended November 30th, 2017.		
16 Q. Okay. When did you start working for 17 First Data?		
18 A. I started working for First Data 19 officially as a full-time employee, I believe it 20 was April 15th, 1998.		
21 Q. Okay, okay. So you were employed by 22 First Data for almost 20 years?		
23 A. Yes.		
24 Q. Okay. All right. So I do want to 25 make very clear that the questions -- a lot of the		

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7 (25 to 28)

	25		27
1	Q. Does anybody else have the capability	1	is the original that will go into the record. So
2	to send an e-mail from either of those e-mail	2	I just ask that you don't write on any of these.
3	accounts?	3	A. Okay, okay.
4	A. Not that I'm aware of.	4	MS. COOPER: And I have copies for
5	Q. Okay. When did you create the J U L	5	all of you.
6	underscore Kelly at mac dot com?	6	BY MS. COOPER:
7	A. Maybe 15 years ago.	7	Q. Have you seen this document before?
8	Q. And you still use both?	8	A. Oh, yes.
9	A. I primarily use Kelly.	9	Q. Okay. When did you see it?
10	Q. Okay. I've noticed that on the	10	A. I first received and saw this
11	e-mails that you send, you will copy the other	11	document on May 23rd, 2018.
12	e-mail; if it comes from J U L underscore Kelly,	12	MS. COOPER: Okay. And so let me
13	you'll copy the J U L underscore Glad e-mail	13	just state for the record that this is the letter
14	account?	14	dated May 16th, 2018 from Gary Eidelman to
15	A. Um-hmm.	15	Ms. Kelly enclosing the subpoena, that together is
16	Q. Is there a reason that you do that?	16	16 Kelly Exhibit 5.
17	A. I just copy myself, and so in my	17	MR. SHEARER: For the record, can you
18	address book, it says Julie.	18	indicate the date of this again?
19	Q. Okay.	19	MS. COOPER: The subpoena is dated
20	A. So whether it's Glad or -- I have no	20	20 May 16, 2018, and it commands appearance on June
21	idea.	21	25th, 2018. Did I say May 16, 2018? I don't know
22	Q. Okay. All right.	22	if I said '16 or '18.
23	A. It's just common practice --	23	BY MS. COOPER:
24	Q. Okay.	24	Q. Okay. So you said you received this
25	A. -- for me to copy myself.	25	25 document on May 23rd. How did you receive it?
	26		28
1	Q. Okay. So the first thing I want to	1	A. There was -- I was out back with my
2	give you to is -- so under the Federal Rules,	2	children in the pool, and my husband kind of came
3	you're entitled to a witness fee for appearing	3	and got me and said there's a delivery, a FedEx
4	here today for your deposition, so I'm going to	4	deliveryman at the door, and he needs you to come
5	give you the check. Under the court order, we're	5	sign for a package. So it look me a little while
6	also reimbursing you for your child care costs.	6	to get to the door because I had children outside.
7	So I just ask that when you receive that, I don't	7	You can't leave young children in a pool. And so
8	know if it's a bill or an invoice or --	8	I walked over, and there was a guy dressed in
9	A. I do have an invoice, but we'll see	9	khakis and a purple shirt and had a FedEx box in
10	10 if it goes the full amount.	10	10 his hand, one of those small packages, letter
11	Q. Okay. So let me give you this, this	11	11 package. And he took a white envelope and handed
12	is the witness fee, so I just -- it's for \$62.80	12	12 it to me and said: Ms. Kelly, you've been served,
13	based on the federal requirements. I just want to	13	13 and then walked away.
14	give you that.	14	So at that point, I was a little
15	A. Okay.	15	taken aback. What's going on? You know, I
16	Q. And then we're going to go ahead	16	16 thought this was a FedEx person, but, clearly, it
17	and -- these documents I've already pre-marked.	17	17 wasn't. A little upset. My children are, you
18	(Thereupon, Kelly Exhibit 5, a 1-page	18	18 know, obviously wanting to get back in the pool.
19	letter dated 5/16/18 to Julie Kelly from Gary	19	19 I opened the package and I see a subpoena for a
20	Eidelman, with attachment, was marked for purposes	20	20 Steven Barger versus First Data case and I'm being
21	of identification.)	21	21 commanded by the court to show up for a
22	BY MS. COOPER:	22	22 deposition.
23	Q. So I'm going to show you what has	23	Q. Okay. Did you have any conversations
24	been marked as Kelly 5. The one thing I ask that	24	with the process server?
25	you don't write anywhere on this document. This	25	A. I didn't, not that I recall.

Transcript of Julie Kelly
Conducted on October 15, 2018

8 (29 to 32)

	29	31
1 Q. Okay. Did he say anything to you?		1 Mr. Shearer about this deposition subpoena?
2 A. I think he asked me if I was		2 A. No. Mr. Shearer and I spoke about my
3 Mrs. Kelly, Mrs. Julie Kelly, my name.		3 own claim.
4 Q. Okay. You said he was wearing khakis		4 Q. Okay. So did you tell him that he
5 and a purple shirt; is that correct?		5 did not have authorization to accept service?
6 A. I believe so.		6 A. I don't even know what that means.
7 Q. Okay. What kind of car was he		7 Sorry.
8 driving?		8 Q. Okay. So you did not --
9 A. From my front door, you cannot see my		9 A. Why would someone accept service;
10 driveway, so I see no vehicles.		10 what does that mean?
11 Q. Okay. Was he wearing any clothing		11 Q. So you did not have a conversation
12 that identified FedEx?		12 about authorization of accepting service?
13 A. I think what tipped me off was,		13 A. No. I have no idea what that means.
14 obviously, the khakis and the FedEx package.		14 Q. Okay. Did you say anything to the
15 Q. Okay. So he was holding a FedEx		15 process server that you were expecting the
16 package. Did he say that he worked for FedEx?		16 subpoena?
17 A. No.		17 A. Not that I can recall.
18 Q. Okay. Did he --		18 Q. Okay. Do you remember what time the
19 A. But he was impersonating, I'm sorry,		19 process server showed up to your house?
20 clearly to me and my family and my children, a		20 A. You know, it was evening, after
21 FedEx employee.		21 dinner. It's kind of a blur, but I would say
22 Q. Why do you say he was impersonating a		22 between 6:30 and 7:30.
23 FedEx employee?		23 MS. COOPER: Okay. We pre-marked
24 A. Just the way he acted with the		24 these, so I will leave these pre-marked, but this
25 clothing, the way he was at the door saying he had		25 will be then Kelly 9.
	30	32
1 a package for me and that I needed to sign for,		1 (Thereupon, Kelly Exhibit 9, a 1-page
2 and the FedEx box. I mean, to an average person,		2 letter dated 5/24/18 to Gary Eidelman from Julie
3 I think that would make you think it's something		3 Kelly, was marked for purposes of identification.)
4 from FedEx.		4 MR. SHEARER: What do you want her to
5 Q. But he did not say that he was FedEx?		5 do with 5?
6 A. No. He impersonated a FedEx person,		6 MS. COOPER: I will take that back.
7 clearly.		7 Thank you.
8 Q. Okay. Did you have any idea that you		8 BY MS. COOPER:
9 would be served with a subpoena?		9 Q. Okay. So when you received the
10 A. I didn't. This was quite shocking.		10 subpoena, you said it was May 23rd. What did you
11 Q. Okay. So I'm not going to introduce		11 do after you saw the subpoena?
12 it as an exhibit, but I'm going to read from a		12 A. Let's see, it is a blur. I was
13 letter or an e-mail dated May 10, 2018 from		13 really upset because, quite honestly, I didn't
14 Mr. Shearer to Mr. Eidelman of my office. The		14 know why I was being, you know, summoned or
15 Subject is: Deposition of Julie Kelly.		15 commanded to speak to you guys. I think at first
16 MR. SHEARER: Why aren't we entering		16 I talked to a few attorneys, friends that I just
17 this as an exhibit?		17 have, relatives actually, to see if FedEx was
18 MS. COOPER: Because I don't want to.		18 allowed to distribute subpoenas or serve
19 I'm just going to reference one part and I'm going		19 subpoenas, whatever you want to call it, and they
20 to ask you a question about it.		20 said no.
21 BY MS. COOPER:		21 Q. Okay. Who were these people that you
22 Q. So in this e-mail, Mr. Shearer		22 spoke to?
23 writes: Ms. Kelly has not given me authorization		23 A. They're just family.
24 to accept service of process on her behalf in any		24 Q. What were their names?
25 matter. So did you have a conversation with		25 A. Just my family.

Transcript of Julie Kelly
Conducted on October 15, 2018

9 (33 to 36)

	33		35
1	Q. Okay. But what -- how many people	1	going a little bit out of order. You can take a
2	did you talk to?	2	couple of moments and look at the document I just
3	A. Just two.	3	handed you. Do you recognize this document?
4	Q. What were those two people's names?	4	A. Yes.
5	A. My cousin Brian and my cousin Tommy.	5	Q. What is it?
6	Q. Okay. Did you talk to anybody else	6	A. This is a letter I wrote to Mr. Gary
7	about --	7	Eidelman on May 24th, 2018.
8	A. My husband was there, so --	8	Q. Did you draft this letter?
9	Q. Okay. Did you talk to Mr. Shearer	9	A. Yes.
10	about the subpoena?	10	Q. Did you show anybody this letter?
11	A. I don't -- no, I don't believe so.	11	A. Probably my husband.
12	Q. Okay. So you received the subpoena,	12	Q. Okay. Did anybody review the letter
13	you spoke to a couple of people, family members,	13	or make any edits?
14	about the subpoena?	14	A. Probably my husband.
15	A. Well, really, it was just can	15	Q. Okay. Did you discuss it with
16	FedEx -- that was my big question, can FedEx serve	16	anyone?
17	subpoenas.	17	A. Probably my husband.
18	Q. Okay. Did you talk to anyone at	18	Q. Okay. So did you discuss this letter
19	FedEx?	19	with Mr. Shearer or anyone at --
20	A. I did. I called to see if I could	20	MR. SHEARER: Objection. No, no, you
21	get some type of tracking number.	21	can't. The discussion --
22	Q. Okay. When was that conversation	22	MS. COOPER: This letter is not
23	with FedEx?	23	privileged.
24	A. It was that evening.	24	MR. SHEARER: Right, but the
25	Q. Okay. So on the 23rd?	25	discussion is.
	34		36
1	A. Um-hmm.	1	MS. COOPER: No, it's not.
2	Q. What did FedEx tell you?	2	MR. SHEARER: It is. If she's
3	A. They told me that they do not issue	3	seeking legal advice, if she's seeking legal
4	subpoenas.	4	advice, whether she talked to me or not, you can't
5	Q. Okay. And so after --	5	ask whether she talked to me about legal advice.
6	A. And they were going to look in to see	6	MS. COOPER: I'm not asking about
7	if someone -- they were going to investigate to	7	legal advice. I'm asking about this letter that
8	see if someone -- a FedEx delivery person was	8	was sent to Mr. Eidelman about this deposition.
9	being impersonated or someone was impersonating a	9	MR. SHEARER: Okay. And your
10	FedEx person.	10	question is: Did I give her legal advice about
11	Q. Okay. Did you talk to anybody else?	11	this letter?
12	A. (Shaking head.)	12	MS. COOPER: That was not my
13	Q. No. Okay. When did you first	13	question. My question was: Did she talk to you
14	have -- what was the first time you had any	14	about this letter, that's not legal advice.
15	contact with either Gary Eidelman, myself, or	15	MR. SHEARER: Okay. That's fine.
16	anybody at the Saul Ewing Arnstein & Lehr law	16	You can go ahead and answer that. I mean, you can
17	firm?	17	go ahead and answer that.
18	A. Probably that subpoena.	18	BY MS. COOPER:
19	Q. So that subpoena was the first time	19	Q. Did you talk to Mr. Shearer about
20	you knew that the firm existed?	20	this letter?
21	A. Yeah.	21	A. No.
22	Q. Okay.	22	Q. Did you talk to Mr. Shearer about the
23	A. Yes. I'm sorry.	23	subpoena?
24	Q. So I'm going to show you what we have	24	A. No. I mean, not that -- not then. I
25	marked as Kelly 9, and I apologize that we are	25	mean, maybe eventually.

Transcript of Julie Kelly
Conducted on October 15, 2018

10 (37 to 40)

	37		39
1 Q. Did you talk to anyone at 2 Mr. Shearer's office about the subpoena?		1 A. (Shaking head.)	1 previously up until the scheduled deposition. No
3 Q. So I'm going to ask -- in the third 4 paragraph, I'm going to ask you to read that 5 paragraph that begins, I am currently unemployed, 6 if you can read that out loud for the record, 7 please.		2 cancellation, no information that it was	2 rescheduled, no new subpoena. I was commanded by
8 A. Out loud?		3 the court to attend, and that's when I changed	3 what I had going on that day.
9 Q. Yes.		4 Q. You said you received no	4 communication from Mr. Eidelman, my law firm, or
10 A. I am currently unemployed and the 11 full-time care taker of four children, three under 12 the age of 5, my brother with learning 13 disabilities, and my elderly mother-in-law. I 14 have commitments on June 25th that I am unable to 15 change. If I had more advance notice, I might be 16 able to find some friends or save some money to 17 pay for their care for one day, but it would take 18 at least a few months for me to save that much 19 money, especially during the summer. I can try to 20 decide how to cut my budget and let you know when 21 I think I might have enough money saved. No 22 matter what, I am not available at all on June 23 25th.		5 myself after the subpoena?	5 A. No. After, I think there was one
24 Q. Okay. I'm also going to ask you that		6 more letter.	6 A. You know, I'm in business. Something
25 you read the last paragraph beginning: I'm sorry.	38	7 is put on my calendar and has not been changed	7 from the originator, I am obligated to show up.
1 A. I'm sorry I can't come to talk about 2 my complaint on June 25th. Maybe I can have my 3 representative from the State of Ohio call you to 4 find a time in July. It will take me at least 5 that long at least to save enough money. I look 6 forward to your response.		8 Q. Okay. I can take that back. Thank	8 you.
7 Q. Okay. So you sent this letter to 8 Mr. Eidelman on May 24th. In it you say that you 9 have commitments on June 25th that you're unable 10 to change and that you say, no matter what, I am 11 not available at all on June 25th; that's correct?		9 (Thereupon, Kelly Exhibit 10, a 10 1-page letter dated 5/25/18 to Julie Kelly from 11 Gary Eidelman, was marked for purposes of 12 identification.)	9 BY MS. COOPER:
12 A. To talk about my complaint on June 13 25th.		10 Q. I'm going to show you what has been	10 marked as Kelly 10. You can take a moment to look
14 Q. Okay. Were you available to talk 15 about something else on June 25th?		11 at this document. Do you recognize this letter?	11 A. Um-hmm, I do.
16 A. At the time that I sent this letter, 17 I was not.		12 Q. Okay. So this is a letter dated May	12 Q. Okay. So this is a letter dated May
18 Q. Okay. So at some point after June --		13 25th sent to you from Gary Eidelman. I'm going to	13 25th sent to you from Gary Eidelman. I'm going to
19 I'm sorry, May 24th, you became available to speak		14 read the letter. It says: Dear Ms. Kelly, I am	14 read the letter. It says: Dear Ms. Kelly, I am
20 on June 25th?		15 in receipt of your overnight letter dated May	15 in receipt of your overnight letter dated May
21 A. Here's what happened. I never got a 22 cancellation. I received no further communication 23 from Saul Ewing, yourself, or Mr. Eidelman. 24 Actually, I don't think we even had contact		16 24th, 2018. The deposition subpoena that you were	16 24th, 2018. The deposition subpoena that you were
25		17 served with is in connection with the lawsuit	17 served with is in connection with the lawsuit
		18 filed by Steve Barger against First Data	18 filed by Steve Barger against First Data
		19 Corporation that is pending in New York. Please	19 Corporation that is pending in New York. Please
		20 refer to the caption on page 1 of the subpoena.	20 refer to the caption on page 1 of the subpoena.
		21 It is not related to your EEOC charge against	21 It is not related to your EEOC charge against
		22 First Data. I understand that June 25th, 2018 is	22 First Data. I understand that June 25th, 2018 is
		23 not convenient for you. Please let me know which	23 not convenient for you. Please let me know which
		24 of the following dates work for your deposition:	24 of the following dates work for your deposition:
		25 June 27, 28, July 3, 5, 6, 13, 16, 17, 19, 23, 24,	25 June 27, 28, July 3, 5, 6, 13, 16, 17, 19, 23, 24,
		26. So as not to burden you financially,	26. So as not to burden you financially,
		27 First Data will pay the cost of childcare for you	27 First Data will pay the cost of childcare for you
		28 to attend the deposition. If you have any other	28 to attend the deposition. If you have any other
		29 questions about your deposition, you should speak	29 questions about your deposition, you should speak
		30 with your lawyer, Shawn Shearer.	30 with your lawyer, Shawn Shearer.
		31 Did you ever respond to Mr. Eidelman	31 Did you ever respond to Mr. Eidelman
		32 or anyone at Saul Ewing about those alternative	32 or anyone at Saul Ewing about those alternative
		33 dates that were proposed?	33 dates that were proposed?

Transcript of Julie Kelly
Conducted on October 15, 2018

11 (41 to 44)

	41		43
1	A. I believe I did respond to this.	1	(Thereupon, Kelly Exhibit 11, a
2	Q. Okay. Did you respond and pick a new	2	1-page letter dated 5/29/18 to Gary Eidelman from
3	date?	3	Julie Kelly, was marked for purposes of
4	A. I did not because I was waiting on	4	identification.)
5	some answers to my questions, questions in the	5	BY MS. COOPER:
6	previous letter, and then I believe -- and it's	6	Q. So you receive that letter from
7	kind of a blur, but I believe that there were	7	Mr. Eidelman. What did you do after receiving
8	other questions I was waiting to be answered.	8	that letter?
9	Q. Like what sort of questions?	9	A. Oh, goodness, I honestly can't tell
10	A. Who was going to -- who represents me	10	you exactly what I did after I received that
11	and what am I supposed to be doing? I know at	11	letter.
12	first I was confused over which case this was for	12	Q. Did you show the letter to anybody?
13	because I wasn't --	13	A. Probably my husband.
14	Q. Right. So in this letter from	14	Q. Okay. Did you show the letter to
15	Mr. Eidelman, it says: The deposition subpoena is	15	Mr. Shearer?
16	served in connection with the lawsuit filed by	16	A. No.
17	Steve Barger.	17	Q. Okay. Did you talk to Mr. Shearer
18	A. Um-hmm.	18	about that letter?
19	Q. It is not related to your EEOC charge	19	A. No. I had a lot going on. It was
20	against First Data. So did that not clarify	20	probably late at night when I finally opened the
21	what --	21	mail. I don't know.
22	A. Well, then, he says to speak with my	22	Q. Okay. I'm going to show you Exhibit
23	lawyer, Shawn Shearer, who's not my attorney for	23	11.
24	this case. So why would I talk to him?	24	A. Oh, I opened it in the morning.
25	Q. Okay. But you received this letter,	25	Q. Okay. So what is this document that
	42		44
1	but you did not respond and pick an alternative	1	I just showed you?
2	date that was provided in this letter?	2	A. So this is a response to
3	A. Not at that time. Not at this time.	3	Mr. Eidelman. I believe I had asked him not to
4	Q. Did you ever provide an alternative	4	use FedEx because we needed to get some security
5	date?	5	cameras set up at our house due to the way the
6	A. I don't know.	6	subpoena was first issued. And so he did not
7	Q. Okay. So also in this letter, it	7	respect that and he sent FedEx again, so just
8	says: So as not to burden you financially, First	8	asking him why.
9	Data will pay the cost of childcare for you to	9	Q. I'm sorry, you said you had requested
10	attend the deposition.	10	that Mr. Eidelman not use FedEx?
11	A. I did misunderstand that.	11	A. Oh, maybe I requested that here.
12	Q. What did you understand that to mean?	12	Well, I assumed he would get that. He had sent it
13	A. I thought childcare was going to be	13	the first time.
14	provided at the deposition.	14	Q. Okay. Even though you know that --
15	Q. Okay. Why did you believe that?	15	you know now that the process server was not a
16	A. I don't know, quite honestly. I	16	FedEx --
17	just -- (shaking head).	17	A. Yeah. I didn't know that on June
18	Q. Okay. But you will agree that the	18	29th.
19	letter does not say that childcare will be	19	Q. Okay.
20	provided?	20	A. They were still doing an
21	A. Right. I mean, it says, yeah,	21	investigation.
22	they'll pay the cost.	22	Q. Okay. So did you draft this letter?
23	Q. Okay.	23	A. I did.
24	A. I did misinterpret that.	24	Q. Is that your signature at the bottom?
25	Q. Let me take that. Thank you.	25	A. Um-hmm.

Transcript of Julie Kelly
Conducted on October 15, 2018

12 (45 to 48)

	45		47
1	Q. Did you discuss this letter with	1	Q. Did you have any more conversation
2	anybody?	2	with FedEx?
3	A. Probably the same, my husband. I'm	3	A. I had one and they didn't find
4	sure he had some edits for me as well.	4	anything, so I guess the case was closed.
5	Q. Anybody else besides your husband?	5	Q. So how many conversations in total
6	A. No.	6	did you have with FedEx?
7	Q. Okay. Have you -- you said that you	7	A. Two.
8	were planning on installing video cameras or	8	Q. Two, okay. When was the first
9	surveillance cameras?	9	conversation?
10	A. Um-hmm.	10	A. It was the evening that I received
11	Q. Have you --	11	the subpoena.
12	A. We have them, um-hmm.	12	Q. Okay. And the second?
13	Q. When were those installed?	13	A. I think it was the next day, a couple
14	A. Oh, gosh, I can't remember.	14	14 of days later. I honestly can't remember. I may
15	Q. But was it before or after --	15	15 have written it in a notebook. I don't know.
16	A. It was after.	16	Q. Okay. So you also say in this
17	Q. Okay.	17	letter: Shawn Shearer, Esq., is not my lawyer on
18	A. Yeah. You just can't see -- usually,	18	the Steven Barger versus First Data case.
19	19 we don't get this type of thing happening in our	19	A. Right. Mr. -- I'm sorry.
20	20 neighborhood, quite honestly.	20	Q. That's okay.
21	Q. What type of thing?	21	A. Mr. Eidelman had said in his previous
22	22 A. Random people coming up to your door,	22	22 letter to speak with Mr. Shearer about -- if I had
23	23 banging on your door serving papers.	23	23 any questions, and I just wanted it to be clear
24	Q. So you -- the process server banged	24	24 that Mr. Shearer was not my lawyer for this case.
25	on your door?	25	Q. Okay, understood. Okay. I can take
	46		48
1	A. Well, knocked on the door. I don't	1	that back. What is your telephone number?
2	know. I didn't answer the door.	2	513-806-4893.
3	Q. So you don't know if he rang the door	3	Q. Okay. Did you ever receive a
4	bell or --	4	voicemail message from either myself or anybody
5	A. We don't get someone impersonating or	5	from my firm?
6	6 looking like a FedEx person coming to our door, so	6	A. I received one just recently, it was
7	7 we want extra protection going forward.	7	7 a couple of weeks ago when we had a conference
8	Q. Again, why do you think he looked	8	8 call with Judge Bowman. I was actually on the
9	like a FedEx employee?	9	9 line and I think you left me a message.
10	A. What he was wearing --	10	Q. Right, yes. So that was -- I believe
11	Q. Okay.	11	the judge wanted us to call back in?
12	12 A. -- is very similar to what all of the	12	A. Yeah. I was already on the line,
13	13 FedEx people wear in our neighborhood, and he had	13	13 yeah. So yes, I got that message a couple of days
14	14 a FedEx package in his hand.	14	14 later.
15	Q. Okay. But you did not see the	15	Q. Okay. Did you receive any other
16	vehicle he drove?	16	voicemail messages from either myself or any
17	17 A. No. You cannot see vehicles in my	17	17 person at my firm?
18	18 driveway from my front door.	18	A. No.
19	Q. Okay. And he wasn't wearing any item	19	Q. Okay. Have you checked your call
20	20 of clothing that said FedEx?	20	history to see if there were any calls or any
21	A. I don't know.	21	21 messages from --
22	Q. Okay. You say in this letter that	22	A. I don't normally do that.
23	23 you were going to work with FedEx to figure out	23	Q. Okay. So you don't recall receiving
24	24 who the impersonator was?	24	24 a missed call on June 21st or a voicemail message
25	A. Um-hmm.	25	25 from me?

Transcript of Julie Kelly
Conducted on October 15, 2018

13 (49 to 52)

	49		51
1	A. Oh, no.	1	Kelly 10, the May 25th letter from Gary Eidelman,
2	Q. Okay.	2	he said: I understand June 25th is not convenient
3	A. I think I just listened to your other	3	for you. Please let me know which of the
4	one the other day, that's why it's in the top of	4	following dates work.
5	my mind.	5	A. Um-hmm.
6	Q. All right. Do you normally save	6	Q. So how is that not confirming that
7	voicemail messages?	7	you're not available on June 25th and here are
8	A. No. I may have a couple from when my	8	other dates, let me know what works for you?
9	children were born or something like that, but no.	9	A. He didn't say it's canceled.
10	Q. So is it a practice that you go	10	Q. So you wanted someone to say in
11	through and delete your voicemail messages?	11	writing that the deposition on June 25th is
12	A. Honestly, you know what happens,	12	canceled?
13	someone will call me, my mom or someone will say	13	A. Or rescheduled.
14	your voicemail is full, go delete some, so I'll	14	Q. Okay. Well, if you say that you're
15	just go through and delete some.	15	not available and we say, okay, here are other
16	Q. Have you gone back and looked to see	16	dates, and then you never chose any of other dates
17	if there are any voicemail messages from June	17	that were provided --
18	21st?	18	A. So I assumed the original date is
19	A. I haven't, no.	19	still valid.
20	Q. Okay. All right. So you sent this	20	Q. Based on what?
21	letter. Did you give it back to me yet?	21	A. Based on the fact that there was
22	A. Yeah.	22	never another date agreed upon by anyone or issued
23	Q. All right. So you sent the last	23	by a new subpoena. I don't know how it works.
24	letter that we just looked at on May 29th?	24	I'm not an attorney.
25	A. Um-hmm.	25	Q. Okay. So if you don't know how it
	50		52
1	Q. Did you have any contact with anyone	1	works and my office is sending you a letter saying
2	at my firm or myself after this letter before June	2	here are other dates that are available, why did
3	25th, which is the date that the deposition was	3	you not choose one of those dates?
4	originally scheduled for?	4	A. Like I said earlier, I was waiting on
5	A. I don't know off the top of my head	5	some questions to be answered by Mr. Eidelman.
6	unless I looked at a calendar or something.	6	Q. Okay. Which were what questions? In
7	Q. Okay.	7	your May 29th letter, you asked for the name of
8	A. I don't believe so, but --	8	the process server, of the person who served the
9	Q. Okay. So you never at any time told	9	subpoena?
10	either myself, Mr. Eidelman, or anyone in my law	10	A. Um-hmm.
11	firm that you were now available on June 25th?	11	Q. Did you --
12	A. (Shaking head.)	12	A. Yes.
13	Q. Okay.	13	Q. You did not say that I will agree to
14	A. No.	14	a date once you provide me that name?
15	Q. You've said a couple of times about a	15	A. No. Sorry.
16	cancellation, you've never received a confirmed	16	Q. Okay. All right. When did you
17	cancellation?	17	decide that you were going to appear on June 25th?
18	A. Um-hmm.	18	A. I think it was that Friday before. I
19	Q. What do you mean by a confirmed	19	think it was Monday.
20	cancellation?	20	Q. Okay. Right, the 25th was a Monday.
21	A. Just it doesn't even have to be	21	So what was that, the 22nd?
22	confirmed, but someone cancelling a meeting or	22	A. Yeah. I was coordinating things.
23	rescheduling a meeting, I never received a	23	Q. Okay. So on Friday, the 22nd, you
24	notification that something was canceled.	24	made the decision to appear at the deposition?
25	Q. Okay. Although, when we looked at	25	A. Yeah. I made some arrangements.

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14 (53 to 56)

	53		55
1	Q. Okay. Did you talk to anybody about	1	Q. (Indicating.)
2	that decision?	2	A. Sorry, I just want this to go on the
3	A. My husband and my oldest daughter.	3	record too. This was when I was confused as to
4	Q. Okay. What did you discuss?	4	what this subpoena was about because I had just
5	A. Changing our plans.	5	filed my own case, and that's clearly in here.
6	Q. Okay.	6	And at the bottom, I say: I'm sorry I cannot come
7	A. Because I was commanded by the court	7	to talk about my complaint on June 25th. So
8	to be there, I received no notification, no	8	clearly, at the time I had questions and I was
9	further answers to my questions, so I assumed that	9	confused as to what the subpoena was originally
10	the 25th was still on; and I also knew if I didn't	10	about. So absolutely, I cannot be there was -- I
11	show up for the 25th, I could be held in contempt	11	was assuming at the time that it was to talk about
12	because that subpoena was still valid.	12	my complaint.
13	Q. Okay. So did you talk to Mr. Shearer	13	Q. Okay. So you were available on June
14	about appearing on June 25th?	14	25th, but just not to talk about your complaint;
15	A. No.	15	is that what you're saying?
16	Q. Okay. Did you talk to anyone from	16	A. It could have been possible.
17	his office about appearing?	17	Q. Okay.
18	A. No. I spoke with my husband and my	18	A. This was a very stressful time.
19	oldest daughter --	19	Q. All right. Okay. So let's talk
20	Q. Okay.	20	about June 25th. June 25th, 2018 was a Monday.
21	A. -- so we could change our plans.	21	How did you start out that morning?
22	Q. Okay. Did you think about reaching	22	A. Well, I probably got up at 6:00, got
23	out to anyone at my law firm to --	23	my children up, got my children ready. They knew
24	A. I hadn't heard from anyone from your	24	we had somewhere to go that day. I probably said
25	law firm for weeks, so quite honestly, I thought	25	it was an adventure, we were doing something fun.
	54		56
1	it was a trap.	1	You know, we got dressed. We had breakfast, and
2	Q. What do you mean by a trap?	2	we got packed in the car, and we headed to the
3	A. I thought if I go, they're going to	3	address on the subpoena.
4	be there, great; and then if I don't go because we	4	Q. Okay. Again, why did you decide to
5	never set a new date, I'm held in contempt. I was	5	bring your children with you?
6	very worried.	6	A. I was under the impression that
7	Q. Okay.	7	childcare would be provided at the deposition.
8	A. It's very -- you know, I abide by the	8	Q. Okay.
9	law.	9	A. I attend mom groups and I attend a
10	Q. Okay.	10	women's group at my church, and, you know, I had a
11	A. When you get a subpoena, an average	11	lot going on, I assumed it was the same.
12	person, it's not an easy thing.	12	Q. What do you mean, what was the same?
13	Q. Right. But, yet, you get the	13	A. Childecare was provided.
14	subpoena and then you put in writing that you are	14	Q. Okay. So you're telling me that you
15	absolutely unavailable on June 25th?	15	get this subpoena, which you say is, you know, a
16	A. Okay.	16	legal document that's issued by the court, you're
17	MR. SHEARER: Objection. That's not	17	going to abide by it, and the letter from
18	what the testimony was.	18	Mr. Eidelman says we will reimburse you for
19	MS. COOPER: Okay.	19	childcare costs, but, yet, you're confused --
20	BY MS. COOPER:	20	A. I wasn't confused. I just
21	Q. So I will read the letter. In your	21	interpreted it differently.
22	May 24th, 2018 letter, you say, quote: No matter	22	Q. Okay. So where Mr. Eidelman says,
23	what, I am not available at all on June 25th.	23	quote: So as not to burden you financially, First
24	A. Correct. Now, can I see that a	24	Data will pay the cost of childcare for you to
25	second?	25	attend the deposition, you interpreted that to

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15 (57 to 60)

	57		59
1 mean bring your children to the deposition, we		1 Q. Is that your signature?	
2 will provide a baby-sitter?		2 A. Yeah.	
3 A. I did.		3 Q. Okay. Where did you draft this	
4 Q. Okay. So June 25th, 2018, you appear		4 document?	
5 at the location in the subpoena for the		5 A. In my car.	
6 deposition. How many children did you have with		6 Q. Okay. So in your car, and then did	
7 you?		7 you show anybody this document?	
8 A. Three.		8 A. No.	
9 Q. Three. Okay. What happened when you		9 Q. Okay. So it begins: Gary, I never	
10 got to the location?		10 received a confirmed cancellation. Again, what	
11 A. We went up, we went inside.		11 does that mean?	
12 Actually, you have to ring a buzzer to get inside.		12 A. That means no one told me that the	
13 And I asked for Mr. Eidelman for the 10:00 -- I		13 deposition was not going to take place on June	
14 believe it was 10:00, deposition.		14 25th, 2018 --	
15 Q. And then what?		15 Q. Okay.	
16 A. And the person I spoke with,		16 A. -- by letter, by phone, by e-mail, by	
17 Mr. Clement, I believe, he gave me his business		17 text, no one told me.	
18 card, didn't know what I was talking about, didn't		18 Q. Okay. But you said that you had not	
19 know Mr. Eidelman, and was going to check with his		19 checked to see if there are any voicemail messages	
20 colleague to see what was going on and just told		20 from me?	
21 us to have a seat.		21 A. I wouldn't know your number. I	
22 Q. Okay. But what happened after he		22 wouldn't know --	
23 said he was going to --		23 Q. Okay. But if you're saying you never	
24 A. He went and checked, and his		24 received a call cancelling the deposition, if you	
25 colleague came out, too, and they said that there		25 don't --	
	58		60
1 was nothing scheduled.		1 A. No.	
2 Q. Okay. Did you call anybody while you		2 Q. -- know my number, how would you --	
3 were at the office location?		3 you didn't check any voicemail, I mean --	
4 A. No.		4 A. Well, would your number come up Saul	
5 Q. Okay. Did you call anyone from		5 Ewing? I don't know. If it would, I probably	
6 Mr. Eidelman's office or my office?		6 would have listened to it, if you called --	
7 A. I wasn't at your office.		7 Q. Okay.	
8 Q. No. Did you call anyone at our		8 A. -- but I didn't.	
9 office about --		9 Q. You didn't check?	
10 A. No. I didn't have -- I wrote a		10 A. I didn't see anything, no.	
11 letter I dropped in the mail later.		11 Q. Okay. So in the second paragraph,	
12 Q. Okay. So where did you -- actually,		12 it's kind of hard to see, it says: I have not	
13 let's go ahead.		13 heard back from you after my last letter, and if	
14 (Thereupon, Kelly Exhibit 12, a		14 we need to set a rescheduled date, please use USPS	
15 1-page, handwritten letter dated 6/25/18 to Gary		15 to communicate next steps. As you know, I do not	
16 from Julie Kelly, was marked for purposes of		16 have any legal representation for this case.	
17 identification.)		17 A. Um-hmm.	
18 THE WITNESS: I probably called my		18 Q. Okay.	
19 husband, quite honestly.		19 A. Yes.	
20 BY MS. COOPER:		20 Q. So you say if we need to set up a	
21 Q. Okay. I'll show you this. Do you		21 rescheduled date, please use USPS. How come you	
22 recognize this document?		22 never responded to any of the other reschedule	
23 A. Yeah.		23 date suggestions that were provided in the earlier	
24 Q. Did you draft this document?		24 letter?	
25 A. I did.		25 A. Like I said, I was waiting on some	

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16 (61 to 64)

	61		63
1 answers to those questions, and then, you know, I		1 anyone?	
2 received no further communication.		2 A. Probably my husband.	
3 Q. Okay. All right.		3 Q. Okay. Anybody besides your husband?	
4 A. So --		4 A. No, ma'am.	
5 (Thereupon, Kelly Exhibit 13, a		5 Q. Did anybody make any edits to the	
6 1-page letter dated 6/27/18 to Gary Eidelman from		6 document?	
7 Julie Kelly, was marked for purposes of		7 A. Maybe my husband. I honestly can't	
8 identification.)		8 remember. There's been a lot of letters I've been	
9 MR. SHEARER: Was that letter that we		9 writing.	
10 just did No. 12; is that what we marked that?		10 Q. Okay. So in the second sentence, you	
11 MS. COOPER: Yes.		11 say: I took your subpoena very seriously, and	
12 BY MS. COOPER:		12 while I told you that date was not going to work	
13 Q. Okay. Do you have any photos or		13 for me, went out of my way to accommodate your	
14 videos from your trip to the law firm on June		14 legal request and attend. But I believe you said	
15 25th?		15 multiple times that you never communicated that	
16 A. Yes.		16 you were now able to attend with Mr. Eidelman or	
17 Q. Did you bring them with you today?		17 myself?	
18 A. I brought the photos.		18 A. Right. You guys set the date. I	
19 Q. All right. So we'll go through --		19 assumed that date stuck unless you told me	
20 actually, do you have those now?		20 otherwise.	
21 A. Do you just want --		21 Q. Okay. You also say in the same	
22 Q. Yeah, I'll take the stack. Thank		22 paragraph: You stated that First Data would pay	
23 you. Do you have copies of this or can I keep		23 for childcare, which I assumed would be at the	
24 this?		24 deposition. If that is incorrect, that is another	
25 A. I didn't make any other copies. I		25 reason you should have been more responsible with	
	62		64
1 wasn't told to duplicate.		1 your communication with me.	
2 Q. Right, we didn't say that.		2 A. Again, that's where I misinterpreted.	
3 MR. SHEARER: Can we just have them		3 We spoke about that earlier.	
4 go into the record?		4 Q. Okay. So the third paragraph,	
5 MS. COOPER: Yeah. I'm just trying		5 begins: On a related note, I find it interesting	
6 to decide --		6 that some of my ex First Data peers were not	
7 MR. SHEARER: I don't have copies		7 subpoenaed, but, rather, asked to do a casual	
8 either.		8 phone conversation or meeting. What ex First Data	
9 MS. COOPER: I don't know if I want		9 peers are you talking about?	
10 to. We'll take a break in a little bit and I'll		10 A. I spoke with one person who had a	
11 look at them, and then we'll figure out how we're		11 conversation with you guys.	
12 going to handle that.		12 Q. Who was that?	
13 THE WITNESS: Sorry.		13 A. Nick Mantia.	
14 MS. COOPER: That's okay. Most of		14 Q. When did you speak to Nick Mantia?	
15 the time when we do depositions, we're in an		15 A. This may have been in June. I really	
16 office and we can easily make copies, but I'll		16 don't know.	
17 review them and we'll figure that out on the		17 Q. Okay. Did you speak to any other --	
18 break.		18 A. No.	
19 BY MS. COOPER:		19 Q. When you say ex First Data peers, so	
20 Q. I'm going to show you Exhibit 13, and		20 would that imply that it was more than one person?	
21 do you recognize this document?		21 A. He's the only one I spoke with.	
22 A. I do.		22 Q. Okay. What did you and Mr. Mantia	
23 Q. Did you draft this document?		23 discuss?	
24 A. Yes.		24 A. He just told me he had a conversation	
25 Q. Did you discuss this document with		25 with your law firm.	

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17 (65 to 68)

	65		67
1	Q. Okay.	1	A. It wouldn't have been about -- we
2	A. I don't know who.	2	don't discuss the case.
3	Q. Okay.	3	Q. So you've never had a conversation
4	A. No details, just --	4	with Mr. Barger about his lawsuit?
5	Q. Okay. What did you tell him about	5	A. No.
6	your potential deposition or did you?	6	Q. Okay. Have you had a conversation
7	A. I didn't talk about it.	7	with any First Data employee, whether current or
8	Q. Okay. What else did Mr. Mantia	8	former, about the lawsuit?
9	discuss with you?	9	A. The only thing would have been with
10	A. Nothing related to the Barger case.	10	Nick.
11	Q. Okay. Were your communications with	11	Q. Okay. And what did you discuss?
12	Mr. Mantia via telephone or e-mail, text?	12	A. He just told me he was speaking with
13	A. Phone.	13	Rhonda Johnson. I think they have a complicated
14	Q. Phone, okay. Did you have any	14	relationship, I'm not sure, and I believe she
15	follow-up conversations with him in writing?	15	works at First Data still. I'm not sure. But she
16	A. No.	16	had told him he was going to be getting a call and
17	Q. Okay. Did you have any other e-mail	17	he was going to be speaking to your law firm, and
18	communications with any other either current or	18	that was the extent of it.
19	former First Data employees?	19	Q. Okay. Did he tell you the content
20	A. No.	20	20 of --
21	Q. Okay. Did you have any conversations	21	A. He did not.
22	with Steve Barger about --	22	Q. Okay. And you've had no other
23	A. No.	23	conversations about Steve Barger or his lawsuit?
24	Q. -- the subpoena?	24	A. No.
25	About his case?	25	Q. Okay.
	66		68
1	A. No.	1	A. Do you want that?
2	Q. About the deposition?	2	Q. I can take that, yes. Thank you. So
3	A. No.	3	I want to ask you about a statement you made a
4	Q. Okay. When was the last time you	4	couple of times about your representation.
5	spoke to Mr. Barger?	5	A. Um-hmm.
6	A. It's been awhile.	6	Q. You said that you did not learn about
7	Q. Okay. Can you give me a year; were	7	Saul Ewing or Gary Eidelman or myself until you
8	you still working at First Data?	8	received the subpoena in May of this year?
9	A. Maybe a couple of months ago.	9	A. Correct.
10	Q. Couple of months ago?	10	Q. Okay. You've said a couple of times
11	A. Um-hmm.	11	that you believe that Saul Ewing is your attorney
12	Q. What did you discuss?	12	in connection with this case?
13	A. Probably just checked in with my	13	A. Yes.
14	kids, hi, how are you doing. I check in on his	14	Q. Why do you believe that?
15	health to see how he's doing.	15	A. I believe that because I received the
16	Q. This was over the phone?	16	subpoena from you to talk about the plaintiff, so
17	A. Um-hmm.	17	my first gut reaction was that if I need counsel
18	Q. Okay. Have you had any e-mail	18	or I have questions about the case -- because they
19	communications with Mr. Barger?	19	want me to come and talk about the plaintiff, they
20	A. Yes. They're all included.	20	are my attorneys, counsel, lawyer, whatever.
21	Q. Okay. Did you have any conversations	21	Q. Okay. What made you form the basis
22	with Mr. Barger after you had received the	22	22 that receiving the subpoena made Saul Ewing your
23	subpoena?	23	23 attorney?
24	A. Maybe. I don't know.	24	A. (Shaking head.)
25	Q. Okay.	25	Q. Did anybody tell you that?

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18 (69 to 72)

	69		71
1 A. No. That's what I interpreted as of		1 Q. Well, actually --	
2 receiving that subpoena.		2 A. I saw an excerpt of it.	
3 Q. So you had not had any conversations		3 Q. Right. Actually, you -- let me -- so	
4 with any attorneys at Saul Ewing about		4 the Rule 26(a) initial disclosures that you just	
5 representation?		5 mentioned, when was the first time that you saw	
6 A. No.		6 the full document?	
7 Q. Okay. Did anyone from Saul Ewing		7 A. Last week.	
8 ever tell you that they were your attorney?		8 Q. Last week, you had never seen the	
9 A. That's what I assumed.		9 full document prior to that?	
10 Q. My question is: Did anybody at Saul		10 A. No.	
11 Ewing ever tell you that they are your attorney?		11 Q. You said you saw an excerpt?	
12 A. I'm not sure.		12 A. Um-hmm.	
13 Q. Okay.		13 Q. What was that excerpt?	
14 A. I'd have to look back through the		14 A. That excerpt was my name and it was	
15 letters because I know in my gut I thought that		15 in one of my filings. It was Mr. Shearer's	
16 Saul Ewing was going to represent me for the		16 declaration.	
17 Barger case.		17 Q. Okay. So prior to last week, you had	
18 Q. Why?		18 never seen a full of the initial disclosures?	
19 A. Because of how the subpoena was		19 A. Correct.	
20 issued to me.		20 Q. Okay.	
21 Q. So the fact that you got a subpoena		21 (Thereupon, Kelly Exhibit 14, a	
22 makes you think that the attorney who sent the		22 multi-page Motion for Sanctions, was marked for	
23 subpoena was now your attorney?		23 purposes of identification.)	
24 A. That's how I interpreted it. I		24 (Thereupon, Kelly Exhibit 15, a	
25 didn't go to years of school for law, so that was		25 2-page Defendants' Initial Disclosures, was marked	
	70		72
1 my first gut reaction.		1 for purposes of identification.)	
2 Q. Did you ever ask anybody at Saul		2 BY MS. COOPER:	
3 Ewing whether they were your attorney?		3 Q. Okay. I'm going to show you what we	
4 A. I did, multiple times.		4 have marked as Exhibit 14.	
5 Q. What answer did you receive?		5 A. Um-hmm.	
6 A. I received a smart aleck response		6 Q. What is that document?	
7 from Mr. Eidelman: How did you ever get that		7 A. This is my motion for sanctions that	
8 idea? I think you mentioned something in an		8 I filed on, looks like -- I always have to check	
9 e-mail, and then I know it's been in a couple of		9 these because the clerks do not file adequately	
10 the papers that have been filed.		10 here.	
11 Q. Okay. So you've been told no, that		11 Q. Right. What do you mean by that,	
12 Saul Ewing is not your attorney?		12 don't file adequately?	
13 A. Um-hmm.		13 A. It's not timely and they often mess	
14 Q. Okay. And, yet, you've raised that		14 up the docket names.	
15 multiple times about --		15 Q. Okay.	
16 A. Right, because then later I found out		16 A. I have had a couple of issues.	
17 there was a list that my name was on where I was a		17 Q. Okay. So it looks like there is a	
18 witness and I could only be spoken to about the		18 time stamp?	
19 case through you, which made me again feel that		19 A. Yeah, that's what I was looking at.	
20 you were my counsel on the Barger case.		20 So it was filed on the 14th of August at 9:02.	
21 Q. What is that list that you received?		21 Q. And this is -- I'm sorry, what was	
22 A. It is called a 26(a), and you		22 that document again?	
23 actually sent me the full thing last week.		23 A. This is a motion for sanctions.	
24 Q. Okay.		24 Q. Okay. Did you draft this document?	
25 A. I had never seen that before.		25 A. I did.	

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19 (73 to 76)

	73		75
1	Q. Okay. Did anybody assist you in	1	Q. Okay.
2	drafting this document?	2	A. I've got -- actually, I've got a copy
3	A. My -- not drafting it, editing.	3	of my legal reference here too.
4	Q. Who was that?	4	Q. Okay. So on page 4, the second
5	A. My mother-in-law is an editor.	5	paragraph in background, it says: In November
6	Q. What sort of editor?	6	2017, unbeknownst to me and without even asking if
7	A. She worked for a Veteran's magazine	7	I could afford their lawyer, First Data included
8	until she retired, so just a general editor.	8	me as a potential witness in the case of Barger
9	Q. Okay. And so you showed her this	9	versus First Data. First Data's disclosures say
10	document before filing it?	10	10 that I, Julie Kelly, may only be contacted through
11	A. Yeah.	11	11 the undersigned counsel.
12	Q. Did you e-mail it to her?	12	A. Um-hmm. That's what I told you, I
13	A. No.	13	saw that excerpt.
14	Q. So you printed out the document and	14	Q. So when did you see the excerpt?
15	she reviewed it?	15	A. I don't know the exact date off the
16	A. Um-hmm.	16	top of my head.
17	Q. Okay. Was she with you to make edits	17	Q. Okay.
18	or how did she --	18	A. I know it's an exhibit.
19	A. She lives with us.	19	Q. All right. The next paragraph, on
20	Q. All right.	20	20 May 26, 2018: I filed a charge of discrimination
21	A. Is there something specific I'm	21	21 with the OCRC against my former employer, First
22	looking for?	22	22 Data. Then, the legal harassment started. A week
23	Q. I'm going to -- okay. So on page 3,	23	23 later, on May 23rd, a man masquerading as a FedEx
24	the first full paragraph, I have tried everything,	24	24 employee knocked on my door, demanded to enter my
25	that paragraph, you say: I have tried everything	25	25 home to get to the backyard where my children
	74		76
1	I can think of to figure out what is going on	1	were, and then pulled a subpoena out from behind
2	here. First, Mr. Eidelman tells the court that he	2	the decoy FedEx box he was holding.
3	is my lawyer in the Barger versus First Data case.	3	A. Um-hmm.
4	What court are you referring to?	4	Q. Okay. So I want to talk about what
5	A. The Eastern New York court. Well,	5	you wrote here as opposed to your testimony
6	when was this filed? It's probably both Ohio and	6	6 earlier in this deposition. So earlier you
7	New York.	7	7 testified that your husband answered the door?
8	Q. Okay. When did Mr. Eidelman tell the	8	A. Yes.
9	Eastern District that he was your attorney?	9	Q. And you were not sure whether he
10	A. I'm assuming it's this 26(a).	10	10 knocked or rang the door bell?
11	Q. Okay. So tell me what you know about	11	A. My husband actually wrote a statement
12	26(a) initial disclosures; how are they used in	12	that states that he answered the door and this is
13	litigation?	13	who was there.
14	A. All I know is that it's a list of	14	Q. Okay.
15	people for a court case that they can talk to.	15	A. And how -- that's where this comes
16	Q. Okay. And do they get filed with the	16	into play, he wanted to actually go to the
17	court?	17	backyard, he said that to my husband.
18	A. I don't know.	18	Q. Okay. Did you hear him say that to
19	Q. Okay. So you don't know if	19	19 your husband?
20	Mr. Eidelman ever told the court that he was your	20	A. No.
21	attorney?	21	Q. Okay. So your husband told you that
22	A. I'm assuming -- it has a number to	22	22 the process server asked to go to the backyard?
23	it. I'm assuming it gets filed.	23	A. Yes.
24	Q. Okay. Have you read Rule 26(a)?	24	Q. Okay. And what did your husband say?
25	A. I probably did.	25	A. He said no.

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20 (77 to 80)

	77		79
1	Q. Did you call the police?	1	A. Probably.
2	A. No.	2	Q. Which?
3	Q. Why not?	3	A. Probably telephone.
4	A. I don't know at the time.	4	Q. Telephone?
5	Q. Okay. The statement that your	5	A. Yeah.
6	husband wrote, is that in this pack?	6	Q. Okay. All right. So if you turn to
7	A. I don't know. I think I filed it.	7	page 8, you have a list of bullet points. You
8	It may have gone to the OCRC.	8	say -- the first bullet point is -- can you just
9	Q. Okay. All right.	9	read that for the record?
10	A. More than likely.	10	A. Yes. My name was not removed from
11	Q. That's something that I'll have to	11	First Data's 26(a) disclosure in the Barger case,
12	make a note that we will have to --	12	and First Data's disclosure still says that I can
13	A. I think it's -- I think it's an	13	only be contacted through Saul Ewing. Are they
14	exhibit, quite honestly.	14	still my lawyer?
15	Q. Okay.	15	Q. Okay. So how do you know that the
16	A. If not, I can get it.	16	16 26(a) initial disclosures had not been updated or
17	Q. Okay. So if you can turn to page 5.	17	17 that your name had not been removed?
18	A. Um-hmm.	18	A. I got an excerpt as an exhibit
19	Q. The second paragraph, beginning	19	through Mr. Shearer's declaration.
20	Mr. Eidelman. Mr. Eidelman was told via e-mail	20	Q. An expert?
21	21 and US mail that I had gone to the law firm for my	21	A. An excerpt.
22	22 deposition on June 25th. For some reason that I	22	Q. Okay.
23	23 still do not understand, Mr. Eidelman decided to	23	A. So had it been updated, I didn't know
24	24 discuss the private e-mail he had received and	24	that at the time I wrote this.
25	25 went, quote, on the record, end quote, with a	25	Q. Okay. So I want to show you what
	78		80
1	bunch of people I used to work with at First Data	1	we've marked as Exhibit 15. Thank you. Exhibit
2	sitting right there, including one in-house lawyer	2	15 is -- what is Exhibit 15?
3	3 named Jill Poole, who was involved in my	3	A. This looks like an excerpt of 26(a).
4	4 discrimination claim against First Data in a	4	Q. What do you mean, an excerpt?
5	5 different deposition in Atlanta, a deposition that	5	A. It's not complete.
6	6 had absolutely nothing to do with me and slandered	6	Q. What's missing from it?
7	7 me, accusing me of lying about attending my	7	A. It goes from page 0 to 5 to 8.
8	8 deposition.	8	Q. Okay. And this document, what did
9	9 Where did you learn this information	9	9 you do with this?
10	10 from?	10	A. I believe this is part of the exhibit
11	A. I learned this from Mr. Shearer.	11	for what I filed on the 14th.
12	Q. Okay. What did he tell you?	12	Q. Okay. And so this is the excerpt
13	A. What went on, my name was slandered.	13	13 that you were referring to that Mr. Shearer
14	Q. Okay.	14	14 provided you?
15	A. I was made out to be a liar.	15	A. You're providing this document, so
16	Q. Okay. And so when did you have that	16	I'm --
17	17 conversation?	17	Q. Right. But this document, if you
18	A. Before the 14th when I filed this.	18	18 look at the top, we see the case number, doc
19	Q. Okay.	19	19 number 7 dash 1 filed 8/14/18. The document we
20	A. I don't know the exact date or time.	20	20 just looked at, Exhibit 14, was document numbered
21	Q. Do you know whose deposition was	21	21 7. So this being 7 dash 1 was an exhibit or a
22	22 taking place?	22	22 part of 7, your motion --
23	A. I don't.	23	A. Okay.
24	Q. Okay. Was this conversation via	24	Q. -- for sanctions.
25	25 telephone or e-mail?	25	A. It's just not --

Transcript of Julie Kelly
Conducted on October 15, 2018

21 (81 to 84)

	81		83
1	Q. It's just not connected.	1	counsel. They are never filed with the court.
2	A. Yeah, that's fine.	2	They might have been filed in the last month or so
3	Q. Right. So is this the excerpt that	3	with the motion practice we've been engaged in.
4	you are referring to?	4	But it is about scheduling depositions or
5	A. Yeah, if this is exactly as I filed	5	scheduling contacts with witnesses. So I want to
6	and pulled. I don't know. You're giving me this,	6	ask -- oh, it's not on here actually.
7	so I don't know if it's been changed.	7	A. Can I ask one more question?
8	Q. Yes. The Exhibit A page I took off,	8	Q. Um-hmm.
9	but if we see at the top, it's part of --	9	A. So when you sent me the full -- you
10	A. Right. I never, I never saw the	10	just said that this is how you schedule
11	complete 26(a) until you sent it to me last week.	11	depositions, right, for a case, you use this
12	Q. Okay. But you received a partial	12	document?
13	from Mr. Shearer?	13	Q. Well, it's a tool about contacting
14	A. Right.	14	witnesses.
15	Q. And this is the document that	15	A. Contacting?
16	Mr. Shearer sent to you?	16	Q. Right.
17	A. As long as you're saying you pulled	17	A. Okay. So when you sent me the full
18	it from what I filed.	18	26(a) last week, I saw that there were a lot of my
19	Q. Okay. When did you receive this	19	peers in my same position that reported to
20	excerpt?	20	Mr. Barger.
21	A. Obviously, before 8/14. I don't --	21	Q. Um-hmm.
22	probably 8/13. I don't know.	22	A. When were those folks subpoenaed and
23	Q. Okay. So if this is the document	23	when were their depositions held?
24	that made you believe that Saul Ewing was your	24	Q. They weren't necessarily all
25	attorney --	25	subpoenaed or deposed.
	82		84
1	A. Yes.	1	A. Why was I?
2	Q. -- if you did not receive it until	2	Q. Because at the time that depositions
3	8/13, then, why did you believe Saul Ewing was	3	started in this case, you had filed a charge,
4	your attorney prior to that date?	4	Mr. Shearer was representing you in connection
5	A. Again, I told you the way I received	5	with that charge, and the rules of professional
6	the subpoena, I thought that Saul Ewing was my	6	conduct that govern attorneys provide that an
7	attorney because I was being called to testify or	7	attorney cannot contact an individual who is
8	to talk to you about the plaintiff.	8	represented by counsel, and because at that point
9	Q. Okay. Do you --	9	you were represented by Mr. Shearer -- and I know
10	A. Then, then, no, I didn't quite	10	10 since then you have said multiple times that he
11	understand it at the time, if that was -- sorry,	11	11 does not represent you in connection with that
12	if that was going to be your next question.	12	12 deposition, but the rules do not provide
13	Q. Okay. Do you understand now that	13	13 representation for particular matters. It says if
14	Saul Ewing is not your attorney?	14	14 a person is represented, we have to go through
15	A. You are not my attorney?	15	15 counsel, and so because you were represented, we
16	Q. Correct.	16	16 wanted to make sure that all communications with
17	A. Then, yes.	17	17 you were on the record. There have also -- as you
18	Q. Okay. So --	18	18 will admit or you have admitted, there were some
19	A. So what does this mean, then? Can	19	19 miscommunications about the childcare. So we
20	you clarify what it means, if you are not my	20	20 wanted to make sure that our communications with
21	attorney, but I can only be contacted through you	21	21 you and when we questioned you and talked to you
22	about this case?	22	22 about Mr. Barger's case that Mr. Shearer had an
23	Q. Right. So these are initial	23	23 opportunity to be present and that we had a
24	disclosures. These documents are not filed with	24	24 recorded transcript so that there was no confusion
25	the court. They are exchanged with opposing	25	25 going forward.

Transcript of Julie Kelly
Conducted on October 15, 2018

22 (85 to 88)

	85		87
1 A. But didn't Mr. Shearer -- I mean,		1 Q. About the subpoena. What is their	
2 he's been involved with this case a long time. I		2 occupation?	
3 mean, didn't he tell you or Mr. Eidelman that he		3 A. One is an attorney and one is in the	
4 did not represent me?		4 Army actually.	
5 Q. Yes, he did. But at that point, you		5 Q. Which one is the attorney?	
6 had a pending charge against the company, and we		6 A. Brian.	
7 made the decision to depose you, which is our		7 Q. Brian, what's his last name?	
8 right under the rules of court.		8 A. Weaver.	
9 A. Interesting. Okay. Are we done with		9 Q. What's Tommy's last name?	
10 this?		10 A. Weaver.	
11 Q. Yeah, I'll take that back. So have		11 Q. Okay. So you spoke to Brian, your	
12 you seen any other versions of Rule 26(a)		12 cousin, about the subpoena?	
13 disclosures?		13 A. I just asked him about subpoenas in	
14 A. Yes. You sent it to me last week.		14 general.	
15 Q. Besides the one I sent to you last		15 Q. What did you ask him?	
16 week, have you seen any other versions?		16 A. I asked him how he could be served.	
17 A. Not that I know of.		17 MR. SHEARER: Wait a second.	
18 Q. Okay.		18 Objection. To the extent that he's an attorney,	
19 A. No.		19 she shouldn't be testifying as to what he told her	
20 MS. COOPER: Let's go ahead and take		20 about the law.	
21 the first 5-minute break.		21 THE WITNESS: That's true, yeah,	
22 (Brief recess.)		22 that's privileged.	
23 BY MS. COOPER:		23 BY MS. COOPER:	
24 Q. We can go back on. I just want to go		24 Q. Is Brian your attorney?	
25 back to the date that you were served with the		25 A. Could be in that situation.	
	86		88
1 subpoena, May 23rd, you said that your kids were		1 Q. But you have said multiple times in	
2 in the pool --		2 writing that you are unrepresented in connection	
3 A. Um-hmm.		3 with this?	
4 Q. -- when you said your husband told		4 MR. SHEARER: You've got the	
5 you that there was somebody at the door?		5 privilege all wrong again. If she asks somebody	
6 A. Um-hmm, yes.		6 about legal advice and he's an attorney, that	
7 Q. Where were your kids when you went to		7 conversation is privileged whether or not it's in	
8 the front door to talk to the process server?		8 this matter or another, the request for legal	
9 A. Behind me.		9 advice and providing of legal advice is	
10 Q. Okay. So your kids were with you at		10 privileged.	
11 the front door?		11 BY MS. COOPER:	
12 A. They had to get out of the pool and		12 Q. So are you saying that at any point	
13 come with me.		13 in connection with this subpoena, have you been	
14 Q. So they came with you, and, you know,		14 represented, have you had an attorney?	
15 did they have a conversation with the process		15 MR. SHEARER: Objection.	
16 server?		16 MS. COOPER: Okay. Are you	
17 A. No. They're very friendly. They		17 instructing your witness or Ms. Kelly not to	
18 didn't say anything to him. They just asked:		18 answer?	
19 Mommy, who is that, who is that man?		19 MR. SHEARER: No. I'm objecting to	
20 Q. How old are they?		20 your question.	
21 A. I have two five-year-olds and a		21 MS. COOPER: Your objection is noted	
22 three-year-old.		22 for the record.	
23 Q. Also, you said that you talked to		23 BY MS. COOPER:	
24 your cousins, Tommy and Brian, was it?		24 Q. At any time during this deposition	
25 A. Um-hmm.		25 process, since you've received the subpoena, have	

Transcript of Julie Kelly
Conducted on October 15, 2018

23 (89 to 92)

89

1 you been represented by counsel in connection with
2 this deposition?

3 **A. I thought you represented me.**

4 Q. Okay. So did you ask your cousin,
5 Brian, whether Saul Ewing would be your attorney
6 if they served you a subpoena?

7 **A. No. I asked him how subpoenas could
8 be served, that was the extent of the
9 conversation.**

10 Q. Okay.

11 **A. End of story.**

12 Q. Okay. If you believed that Saul
13 Ewing was your attorney, why did you not call Saul
14 Ewing?

15 **A. I sent you a letter -- Mr. Eidelman a
16 letter and asked him. If you want to reference
17 those again, we can.**

18 Q. Right. All right. We're going to
19 get back to the e-mails now. This was all before
20 you saw the Rule 26(a), the initial disclosures?

21 **A. Yes.**

22 Q. Okay.

23 (Thereupon, Kelly Exhibit 16, 2
24 2-sided pages of e-mails, the top dated 7/13/18 to
25 Gillian Cooper from Julie Kelly, was marked for

91

1 have received a letter from me last week. The
2 letters must have crossed paths in the snail mail.
3 You provided your e-mail address in the letter, so
4 hopefully, this will be most efficient to connect.
5 I'm hoping I can clear a few things up. You may
6 or may not be aware, but there are restrictions
7 that prevent attorneys from communicating with
8 individuals who are known to be represented by
9 counsel. After we received the charge you filed
10 with the OCRC, even though it's entirely unrelated
11 to the Barger lawsuit, and learned that you were
12 represented by counsel in that case, we were
13 required to follow those rules that prevent us
14 from communicating with someone who is represented
15 by an attorney. Since servicing -- since serving
16 the deposition subpoena, however, you have
17 indicated that you are not represented by counsel
18 and willing to speak to us about the Barger
19 lawsuit. Can we set up a call this week? And
20 hopefully by arranging a call, we can avoid a
21 deposition altogether. Let me know what works
22 best for you and we can set this up.

23 Q. And then did you respond to my
24 e-mail?

25 **A. I did. I asked you if you were my**

92

1 purposes of identification.)

2 BY MS. COOPER:

3 Q. So I'm showing you what has been
4 marked as Exhibit 16. Do you recognize this
5 document?

6 **A. Yes, and I actually referenced this a
7 little while ago.**

8 Q. What part did you reference?

9 **A. When I was asking you and
10 Mr. Eidelman if you were my lawyers, and
11 Mr. Eidelman had a very snarky remark back to me:
12 Where did you ever get that idea?**

13 Q. Okay.

14 **A. On page 2.**

15 Q. Okay. So let's -- so this is an
16 e-mail chain. Let's start -- because it's an
17 e-mail chain, it kind of goes back in time. So if
18 we can turn to page 3, again, a little bit of the
19 way down, it says: From Cooper Gillian A., from
20 me, dated Tuesday, July 10th, 2018, To and then
21 it's to J U L underscore Kelly at mac dot com,
22 copying Gary Eidelman. Can you read the e-mail to
23 me?

24 **A. Dear Ms. Kelly, we are in receipt of
25 your letter dated June 27th, 2018. You should**

1 **lawyer.**

2 Q. Okay. And above that at 10:05,
3 Mr. Eidelman responded. And could you please read
4 what Mr. Eidelman wrote?

5 **A. He said that you are his associate
6 and we are contacting you by e-mail.**

7 Q. Okay. So he says: No, she is my
8 associate. Per your letter, we are contacting you
9 by e-mail. And then what did you respond?

10 **A. I asked Mr. Eidelman if he was my
11 lawyer, and I misspelled Mr., must have been auto
12 correct, so I sent it again, apologizing. And
13 then I get: No, I have not and never have been.
14 Wherever did you get that idea?**

15 Q. Okay. Again, so where did you get
16 that idea?

17 **A. Again, from the subpoena --**

18 Q. Okay.

19 **A. -- because I received it from Saul
20 Ewing, Mr. Eidelman in particular. I believe he
21 was on the first one.**

22 Q. Okay.

23 **A. And I was being asked to come and
24 talk to you, who are the attorneys for the
25 defendant, about the plaintiff, Mr. Barger.**

Transcript of Julie Kelly
Conducted on October 15, 2018

24 (93 to 96)

	93		95
1	Q. Okay.	1	A. Honestly, I think one of my kids had
2	A. And that's what I say right here, you	2	had an accident in the pool and we were trying to
3	gave me that idea as you are the lawyer for First	3	figure out how to clean it, so I was very
4	Data's defendants.	4	distracted.
5	Q. Okay. Well, that's a little	5	Q. What do you mean, when was the --
6	different than what you have said.	6	A. When I was talking to Nick.
7	A. That's what I am meaning.	7	Q. Okay.
8	Q. So what are you meaning?	8	A. That was --
9	A. That's the same to me.	9	Q. Okay.
10	Q. What?	10	A. That's how I remember it, so I don't
11	A. From what I saw on that subpoena, you	11	know when it was, sometime this summer.
12	were the attorneys for the defendants asking me to	12	Q. So we've talked a bit about the need
13	speak about the plaintiff.	13	14 for childcare in connection with the subpoena
14	Q. Okay. Are you a defendant in	14	15 and -- the deposition, I'm sorry. You've also
15	15 Mr. Barger's lawsuit?	15	16 said that you had to arrange for care for your
16	A. No.	16	17 brother and your mother-in-law?
17	Q. Okay.	17	A. Um-hmm.
18	A. But you were asking me to come and	18	Q. Okay. What sort of care would you
19	speak about the plaintiff, so I'm assuming whether	19	19 need to arrange for them?
20	it's called counsel or attorney or lawyer, I	20	A. To make sure that there was someone
21	assumed that that's what you were.	21	21 at my home. My mother-in-law lives in the bottom
22	Q. Okay. So you're saying here that you	22	22 floor in her own apartment. She does not drive.
23	23 gave me the idea, as you are the lawyer for First	23	Q. Okay.
24	24 Data's defendants?	24	A. And then I have a special needs
25	A. Yeah. I did not elaborate on what I	25	25 brother who needs assistance to and from work,
	94		96
1	just said, but it's the same thing.	1	1 those types of things.
2	Q. Okay. And so what did I respond?	2	Q. Okay. So your brother works?
3	A. You said: We are not your lawyers.	3	A. He does.
4	Please provide us with dates that you are	4	Q. Okay. Did you have to arrange for
5	available for a deposition. If we cannot agree to	5	5 care for him for today's deposition?
6	a date, we will be forced to move before the	6	A. I did not.
7	7 United States District Court for the Southern	7	Q. Okay. And what about your
8	8 District of Ohio to compel your deposition.	8	8 mother-in-law?
9	Q. Okay. And what did you respond?	9	A. No. We have a sitter at the house,
10	10 A. I responded with: Quite honestly, I	10	10 so it is arranged with the sitter.
11	11 have no idea who either of you are other than	11	Q. Okay. And this is your
12	12 lawyers for First Data defendants in a federal	12	12 mother-in-law, who you said reviewed and was the
13	13 lawsuit. I don't understand why I'm being asked	13	13 editor at a magazine or some sort of publication?
14	14 to provide other dates for a deposition when I	14	A. Yes, um-hmm.
15	15 showed up to the original not-canceled one.	15	Q. Okay. At some point, you contacted
16	Q. Okay. I want to go back to when you	16	16 Barry Levin at my law firm?
17	17 say that you spoke with -- here, I can take that	17	A. Um-hmm.
18	18 one.	18	Q. How did you receive Mr. Levin's name?
19	You said you spoke to Nick Mantia.	19	A. Your website.
20	Who called whom?	20	Q. Okay. Why were you reaching out to
21	A. I have no idea.	21	21 him?
22	Q. Okay. And when was the conversation?	22	A. Because, quite honestly, I wasn't
23	A. I have no idea. I told you that	23	23 getting anywhere with yourself and Mr. Eidelman.
24	24 earlier.	24	24 I felt like I was being targeted and harassed, and
25	Q. Okay.	25	25 I thought he was your boss, quite honestly.

Transcript of Julie Kelly
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25 (97 to 100)

	97		99
1	Q. Okay. What --	1	to me to get me to talk to you about the Barger
2	A. I don't know if he is or not.	2	case.
3	Q. What conduct made you feel targeted	3	Q. What do you mean, went against you?
4	and harassed?	4	Without getting into --
5	A. For one, the subpoena, the way that	5	A. You were adverse to me in your
6	came to me, and then no one showing up for the	6	response.
7	subpoena.	7	Q. Because I represent First Data?
8	Q. Okay. So those two instances are	8	A. Yes.
9	what led you to feel harassed. Was there anything	9	Q. Okay. When did you find out that I
10	else that led you to feel harassed?	10	represented First Data?
11	A. It was just the whole conduct felt	11	A. When I got a copy of what you filed
12	unethical to me.	12	with the OCRC.
13	Q. What other conduct?	13	Q. Okay. And so because I represent
14	A. The conduct that Mr. Eidelman and	14	First Data, you believe that to be --
15	yourself were conducting towards me, it felt	15	A. I read what you wrote, Gillian.
16	hostile.	16	Q. Okay. All right. We've agreed not
17	Q. Okay. I'm asking for specifics, what	17	17 to --
18	conduct; you said serving the subpoena?	18	A. We're not going to talk about that,
19	A. Um-hmm. The e-mails.	19	but let's just put it that way.
20	Q. The e-mails that I just read, the	20	Q. All right. So that is -- in this
21	e-mails that --	21	case, what sort of conduct contributed to your
22	A. Yes, specifically the one where	22	22 belief that there's been harassment?
23	Mr. Eidelman responds: Wherever did you get that	23	A. Well, what I already said.
24	idea?	24	Q. Okay.
25	Q. Okay. And so that you believe is --	25	A. And then when I got further
	98		100
1	that's what forms your opinion that there was	1	information about your activity.
2	harassment?	2	Q. What further activity, what activity?
3	A. Well, that's one instance.	3	A. What we just mentioned. It starts to
4	Q. What else?	4	overlap. It starts to be clearly that what is
5	A. And the letters, and then obviously	5	going on is for my OCR case, what we cannot talk
6	standing me up for a scheduled subpoena.	6	about today.
7	Q. Okay. Were there other letters that	7	Q. Right. And we have not talked about
8	you received besides the ones that we have gone	8	your OCR --
9	through today from --	9	A. OCR.
10	A. I don't believe so.	10	Q. Thank you. And we have not talked
11	Q. Okay.	11	about it and we won't.
12	A. I mean, I keep track of everything.	12	A. Right, but that's some of the
13	Q. Okay.	13	harassment.
14	A. I think you have them.	14	Q. So the fact that I represent First
15	Q. So the May 25th letter from	15	Data you believe is harassment?
16	Mr. Eidelman, I think that's the only one we've	16	A. Yes.
17	talked about, and then my e-mail to you on July	17	Q. Okay.
18	10th where I say we are in receipt of your letter,	18	(Thereupon, Kelly Exhibit 17, 2
19	I was hoping I could clear a few things up that	19	12-sided pages of e-mails, the top dated 7/20/18 to
20	we've just gone through -- I'm not going to read	20	Timothy Callahan from Julie Kelly, was marked for
21	it again. What else made you feel harassed or	21	purposes of identification.)
22	made you believe that there was unethical conduct?	22	BY MS. COOPER:
23	A. I also found out through the OCR	23	Q. Okay. So you e-mailed Barry Levin.
24	that you were the one who filed against me for my	24	Did you receive a response back from Mr. Levin?
25	case, and on the same day, you tried to reach out	25	A. I don't believe so.

Transcript of Julie Kelly
Conducted on October 15, 2018

26 (101 to 104)

101	103
<p>1 Q. Did you receive a response back from 2 anyone?</p> <p>3 A. I received a response from Timothy 4 Callahan, the junior or the third, I'm not sure.</p> <p>5 Is it the third?</p> <p>6 Q. It might be.</p> <p>7 A. I don't know.</p> <p>8 Q. Actually, no. It's the second, Jr.</p> <p>9 A. Okay, yeah.</p> <p>10 Q. Okay. So you received a response 11 back from Mr. Callahan?</p> <p>12 A. Uh-huh.</p> <p>13 Q. And rather than ask you if you 14 remember what he wrote, I will show you Exhibit 15 17. Again, it's an e-mail chain, so if we turn to 16 the second and third page.</p> <p>17 A. Um-hmm.</p> <p>18 Q. So Mr. Callahan e-mailed you on July 19 19th, 2018. And can you please read 20 Mr. Callahan's e-mail?</p> <p>21 A. Sure. To Julie Kelly. I didn't know 22 I would be reading all day. But the e-mail you 23 sent me on Thursday evening, July 12th, 2018, to 24 Barry Levin, the managing partner of Saul Ewing 25 Arnstein & Lehr, LLP, has been referred to me</p>	<p>1 Go to the second full paragraph, fifth line from 2 the bottom starts: While I, that sentence.</p> <p>3 A. Oh, yes.</p> <p>4 Q. Okay. Can you read while I don't 5 recall and then read the rest of that?</p> <p>6 A. Yes. While I don't recall promising 7 to pay Saul Ewing, it is my -- in that my name 8 appears on a list of people given by Mr. Eidelman 9 to the court months ago and that on that document 10 Saul Ewing instructs Mr. Barger's counsel that I 11 can only be contacted about the Barger case 12 through Saul Ewing. I guess Saul Ewing is called 13 undersigned counsel, but I don't know what that 14 means.</p> <p>15 Q. Okay. So I want to -- we talked 16 about the initial disclosures?</p> <p>17 A. Yes, we have.</p> <p>18 Q. And you said that you received them 19 before you made that filing on August 14th, 2018?</p> <p>20 A. Um-hmm.</p> <p>21 Q. You said you received it probably the 22 day before?</p> <p>23 A. Yeah, like I don't know.</p> <p>24 Q. But this is almost a month before 25 because that was August 14th, this is July 20th.</p>
102	104
<p>1 because I serve as the general counsel to the law 2 firm. I have looked into the events mentioned in 3 your e-mail. Under the circumstance -- 4 circumstances, I believe it's best to respond as 5 follows:</p> <p>6 No. 1, my law firm represents First 7 Data Corporation and certain others in connection 8 with a lawsuit filed on behalf of Steven Barger 9 against our clients. Neither Mr. Levin nor Gary 10 Eidelman nor Gillian Cooper nor me nor anyone else 11 who works at my law firm represents you. As a 12 former employee of First Data Corporation, you may 13 have knowledge that is relevant to the case, so we 14 would like to take your deposition.</p> <p>15 Q. Okay. I'm going to stop you there. 16 We don't have to read the rest of it. You're free 17 to take a look at it, but we don't need to read 18 the rest of it.</p> <p>19 A. Okay.</p> <p>20 Q. So you received this letter from 21 Mr. -- or this e-mail from Mr. Callahan. You 22 respond back -- let's go back to the first page of 23 Exhibit 17.</p> <p>24 A. Um-hmm.</p> <p>25 Q. So you reply back July 20th, 2018.</p>	<p>1 So when did you receive the initial disclosures?</p> <p>2 A. I may not have received it, but I 3 heard of it.</p> <p>4 Q. Who told you?</p> <p>5 A. I heard from --</p> <p>6 MR. SHEARER: Objection.</p> <p>7 MS. COOPER: Okay. Noted for the 8 record.</p> <p>9 BY MS. COOPER:</p> <p>10 Q. Who told you that?</p> <p>11 MR. SHEARER: To the extent it 12 requires you to reveal conversations with counsel, 13 I instruct her not to answer.</p> <p>14 MS. COOPER: Okay. Well, does it 15 require --</p> <p>16 BY MS. COOPER:</p> <p>17 Q. Did you have a conversation with an 18 attorney about the Rule 26(a) disclosures?</p> <p>19 A. I looked up what a 26(a) was on the 20 Internet.</p> <p>21 Q. Okay. And why did you look that up 22 on the Internet?</p> <p>23 A. Because I want to know what this list 24 is.</p> <p>25 Q. Okay. So somebody told you that</p>

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27 (105 to 108)

	105		107
1	there was the initial disclosure list?	1	Q. Okay. But you want to talk to Saul
2	A. I don't know.	2	Ewing's attorney related to your OCRC charge?
3	Q. Okay.	3	A. Yes, because some of the people at
4	A. I know you didn't have me read the	4	Saul Ewing are going to be witnesses once I'm able
5	second part of Mr. Callahan's letter to me.	5	to move forward with my OCRC case.
6	Q. You can read it if you --	6	Q. Okay.
7	A. But I just wanted to bring up that	7	(Thereupon, Kelly Exhibit 18, a
8	that's kind of what really made me respond,	8	1-page e-mail dated 7/24/18 to Barry Levin from
9	because I felt that he didn't care about my	9	Julie Kelly, was marked for purposes of
10	complaints and he was -- of harassment, and he was	10	identification.)
11	brushing it under the table when he clearly could	11	BY MS. COOPER:
12	have said thank you for letting me know, I can	12	Q. Let me show you what's been marked as
13	look into it. I was just very put off by that and	13	Exhibit 18. Have you seen this document before?
14	14 very confused on his response.	14	A. What is wrong with my spacing? Yes,
15	Q. Okay. So it's clear, Mr. Callahan's	15	I have.
16	e-mail continues and it says: Suffice it to say	16	Q. Okay. What is this document?
17	that we respectfully disagree with a number of	17	A. Can I take a moment to read this?
18	your assertions, especially to the extent that	18	Q. Sure.
19	they suggest that anyone at my law firm acted	19	A. So I wrote this after you filed a
20	inappropriately with regard to attempting to	20	motion to compel me for a subpoena I showed up for
21	schedule your deposition. That said, I do not	21	21 in the State of Ohio. I sent this e-mail to
22	believe that further discussion of this matter in	22	22 Mr. Callahan and Mr. Levin.
23	an e-mail from me would be productive at this	23	Q. Okay. You say in here that, quote:
24	time.	24	They have lied to the court in Ohio.
25	So you were not happy with that	25	A. Yes.
	106		108
1	response?	1	Q. What were the lies that were told to
2	A. No. But I see there is a little play	2	the court?
3	on words here in my opinion where he said	3	A. The motion to compel.
4	attempting to schedule. He doesn't mention how I	4	Q. Okay.
5	got stood up.	5	A. You can't compel me to something I
6	Q. Okay.	6	already did.
7	A. So whether or not that is, I mean,	7	Q. Okay. What is the basis for that
8	that's kind of how I'm interpreting that.	8	statement, why do you believe that you can't be
9	Q. Okay. All right.	9	compelled to do something that you've already
10	A. Can I ask a question?	10	done?
11	Q. No. Actually, go ahead.	11	A. Because the motion to compel is to
12	A. I just want to know if we're going to	12	12 get you to do something, and your motion to compel
13	13 be able to talk about the Barger case?	13	13 was for the first subpoena, which I showed up at.
14	Q. Yes, we will.	14	Q. Okay. Right. But we agree that
15	A. Okay.	15	there was apparently some confusion about whether
16	Q. In a couple of your communications	16	you would be showing up?
17	with Mr. Callahan, you have asked that Saul	17	A. No, there was no confusion.
18	Ewing's lawyer get in touch with you?	18	Q. Okay. So let me ask you this, then,
19	A. Um-hmm.	19	if we had shown up on June 25th, you had three
20	Q. Why are you looking to talk to Saul	20	children with you?
21	Ewing's attorney?	21	A. Um-hmm.
22	A. That is for my OCRC case.	22	Q. You have testified that you
23	Q. But you wrote it in connection with	23	misunderstood that childcare would not be
24	the third-party witness subpoena?	24	provided, but that it would be reimbursed?
25	A. Yes.	25	A. Um-hmm.

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28 (109 to 112)

	109		111
1	Q. Would you have expected that the	1	A. I had some bullet points in my
2	deposition go forward while you had three	2	e-mail.
3	children?	3	Q. But I'm asking you what you recall of
4	A. I would. I would have made something	4	the lie.
5	work, of course.	5	A. Well, a big one would be the whole
6	Q. What would you have done?	6	motion to compel.
7	A. I would have called my oldest	7	Q. Okay. Explain to me how that is a
8	daughter.	8	lie.
9	Q. To what?	9	A. Because I showed up for the subpoena
10	A. Come get the children.	10	10 that the motion to compel was based upon.
11	Q. Okay. And how long would that have	11	Q. Okay. And I agree that you showed up
12	taken?	12	12 on June 25th, which is the date that was
13	A. 10 minutes.	13	13 designated. Has Saul Ewing, myself, or
14	Q. Okay. So you live 10 minutes away	14	14 Mr. Eidelman, ever told the court that you did not
15	from the office where the deposition took place?	15	15 show up?
16	A. She does during the summer.	16	A. They told -- Mr. Eidelman told on the
17	Q. Okay. All right. So had the	17	17 record and these documents were filed that I did
18	deposition gone forward, you would have made	18	18 not show up.
19	arrangements for your children to be picked up so	19	Q. Right, that was on June 25th. But
20	20 you --	20	20 has --
21	A. Absolutely.	21	A. Those papers were filed as exhibits
22	Q. Okay. I'll take that. Thank you.	22	22 with the court.
23	What is a Rule 11 or what is Rule 11?	23	Q. Right. You filed them?
24	A. Rule 11, from my understanding, is	24	A. Um-hmm.
25	25 when an attorney has not told the truth on	25	Q. Okay. Has Saul Ewing ever told the
	110		112
1	1 something and I'm asking them to correct it in a	1	court, ever said in a court filing that Saul Ewing
2	2 certain amount of time, I believe it's 21 days.	2	2 filed, not that you filed, that Saul Ewing filed,
3	Q. Where did you learn that?	3	3 that you believe is not truthful, has Saul Ewing
4	A. Google.	4	4 ever filed a document that said you did not show
5	Q. What did you Google?	5	5 up?
6	A. Lawyers lying.	6	A. I'd have to go through them line by
7	Q. Okay. And --	7	line again, there's so many.
8	A. Or attorneys lying or something like	8	Q. Okay. So is it to say that your
9	9 that, I can't remember.	9	basis that Saul Ewing violated Rule 11 is because
10	Q. So you Googled lawyers lying,	10	10 on June 25th during a deposition Mr. Eidelman said
11	attorneys lying, and what website did you go to?	11	11 that he believed that you did not show up?
12	A. Oh, gosh, I don't know. I used a	12	A. I have to read the Rule 11. Do you
13	13 bunch, Cornell a lot.	13	13 have it?
14	Q. What did you read?	14	Q. I do, but I'm not going to enter it.
15	A. Basically read what you can write.	15	I'm just asking you what you can recall about it.
16	You can send a notification to an attorney about	16	A. I didn't review that document.
17	17 your complaint asking them to take it back, redact	17	Q. So you did not review the Rule 11
18	18 it, I'm not sure what the terms are, and I believe	18	e-mail?
19	19 they have 21 days before it can go forward to a	19	A. No. I thought I was coming here to
20	20 judge or a magistrate.	20	20 you talk about the Barger case and not
21	Q. Okay. Does the rule apply to anyone	21	21 specifically the Ohio case, so no.
22	else besides attorneys?	22	Q. Okay. Besides the motion to compel,
23	A. I don't know.	23	what do you believe are other lies that Saul Ewing
24	Q. Okay. And, again, what was the lie	24	24 has said?
25	25 that you believed Saul Ewing had to retract?	25	A. I would have to review the documents.

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29 (113 to 116)

	113		115
1 Again, I did not prepare to speak about the Ohio		1 A. I Google certain situations.	
2 filings.		2 Q. So what's a situation that you have	
3 Q. We're talking about the filings that		3 Googled?	
4 brought us to your deposition today.		4 A. Again, I would have to look through	
5 A. Right. I was not prepared to talk		5 the documents. I just told you this, I've written	
6 about those. I was prepared to talk about the		6 so much and was not prepared. Had I known we were	
7 Barger case.		7 going to be discussing this, I would have read all	
8 Q. That's fine. From what you recall,		8 8 of the documents over the last weekend.	
9 what are the other lies?		9 Q. Okay. At some point you filed a	
10 A. Again, I would have to take a look at		10 declaration of Mr. Shearer, so I don't know if I	
11 the documents.		11 want to --	
12 Q. So you don't remember any off the top		12 A. I believe that's when I was slandered	
13 of your head?		13 by Mr. Eidelman.	
14 A. No. I mean, you threw me off by		14 Q. I'm sorry, what was the slander?	
15 taking all of this time to talk about this Ohio		15 A. When he was calling me a liar.	
16 case, so --		16 Q. Okay. What were you told?	
17 Q. That's fine. You do not have		17 A. Basically, that I was -- I did not	
18 electronic filing privileges in this miscellaneous		18 show up for the deposition on the 25th.	
19 action?		19 Q. Okay. So who told you that?	
20 A. That's correct. I got denied twice.		20 A. Mr. Shearer.	
21 Q. Okay. So when you file anything, how		21 Q. Okay. All right. So you file a	
22 do you file?		22 declaration on --	
23 A. I drive down to the courthouse, park		23 A. And that's in there.	
24 my car, usually have a kid or two in toe, and go		24 Q. Okay. Who drafted Mr. Shearer's	
25 through security at the courthouse, and walk into		25 declaration?	
	114		116
1 the clerk's office and have it filed.		1 A. I would assume he did.	
2 Q. Okay. Has anybody assisted you in		2 Q. Okay. So you did not draft the	
3 any of the filings?		3 declaration?	
4 A. My husband brought one down.		4 A. No.	
5 Q. Okay. So your husband filed one of		5 Q. Okay. Did you ask him to draft the	
6 the documents on your behalf?		6 declaration?	
7 A. Yeah. I can't remember which one it		7 A. I may have.	
8 was. I think it was to get electronic filing		8 Q. Okay. Why did you need a declaration	
9 rights, actually.		9 from Mr. Shearer?	
10 Q. Okay. Actually, I do think I recall		10 A. To prove to the court what was going	
11 reading that in one. Okay. So the actual		11 on.	
12 documents that you file, who drafts them?		12 Q. What was going on?	
13 A. I do.		13 A. I was being told that I was a liar,	
14 Q. Does anybody assist you in drafting		14 first, with the motion to compel. Look, I am	
15 any of the documents?		15 trying to be the room mother at my school, I need	
16 A. No.		16 a background check, and if my name comes up for	
17 Q. Okay.		17 this -- all of this stuff we've been talking about	
18 A. Maybe Google, I might research some		18 for the last couple of hours, it could have been	
19 things.		19 avoided completely. I did nothing wrong.	
20 Q. Okay. So do you have access to any		20 Q. Okay. So First Data filed the motion	
21 case law books or websites?		21 to compel on July 23rd, 2018. Let's see. Okay.	
22 A. What is that?		22 (Thereupon, Kelly Exhibit 19, a	
23 Q. Okay.		23 1-page e-mail dated 7/31/18 to Julie Kelly from	
24 A. Oh, just to like quote things?		24 Gillian Cooper, was marked for purposes of	
25 Q. Any --		25 identification.)	

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30 (117 to 120)

	117		119
1 BY MS. COOPER:		1 you know, if you have to go through a background	
2 Q. I'm going to show you what's been		2 check or any sort of -- you know, for any job	
3 marked as Document 19. Have you seen this		3 application or whatever it may be, and then I	
4 document before?		4 reached out to you and suggested a couple of dates	
5 A. Yes.		5 to resolve the pending motion, and you respond	
6 Q. Okay. And what is the date of this		6 back that you are not available on those dates and	
7 document?		7 that you have requested a hearing; is that	
8 A. This is July 31st.		8 correct?	
9 Q. And what is it?		9 A. Um-hmm.	
10 A. This is an e-mail from yourself,		10 Q. Okay. And so then I reply, say:	
11 Gillian Cooper, basically saying that you want to		11 Understood. Based on your representation that you	
12 resolve this thing in Ohio and offering up -- you		12 are unavailable on August 28th, 29th, and 30th, we	
13 want me to pick one of these three dates.		13 do not expect your appearance on those dates. And	
14 Q. Okay.		14 then if you please read what you responded back to	
15 A. And I did respond that I could not		15 me.	
16 make these dates.		16 A. Yes. You do not seem to grasp what I	
17 Q. Right. And so I write in an effort		17 am saying. I'm telling you out of a courtesy that	
18 to resolve the pending motion in the Southern		18 I am unavailable on those dates. I am under no	
19 District of Ohio, please advise if you are		19 obligation to tell you. I am doing it because I	
20 available for a deposition on the following dates		20 am a courteous person and do not waste other	
21 and times, and then I provide August 28, 29, and		21 people's time like you wasted my time and a day of	
22 30. I say: If you agree to be deposed on one of		22 my children's summer break when you didn't show up	
23 the above dates, we can file a consent order to		23 for the June 25th at 10:00 at Cook & Logothetis,	
24 schedule the deposition and resolve the		24 LLC, 30 Garfield Place, Suite 540, Cincinnati,	
25 outstanding motion. If the dates work but times		25 Ohio 45202. I did what the subpoena required, you	
	118		120
1 do not, please let me know and we can discuss a		1 didn't. Please do what I asked you to do when I	
2 different start time.		2 filed the Rule 11 and tell the Court the truth. I	
3 A. Um-hmm.		3 have done what the subpoena told me to do.	
4 Q. Do you remember receiving this		4 Q. Here I am asking you if we can agree	
5 e-mail?		5 to a date and resolve the motion and enter a	
6 A. I do.		6 consent order, and you say that you were telling	
7 Q. Okay.		7 me out of courtesy that you're unavailable, but	
8 (Thereupon, Kelly Exhibit 20, 1 page		8 you have no obligation to do so.	
9 of e-mails, the top dated 8/2/18 to Gillian Cooper		9 I want to go back to the original	
10 from Julie Kelly, was marked for purposes of		10 back-and-forth back in June -- or I guess May	
11 identification.)		11 about scheduling the deposition where you tell me	
12 BY MS. COOPER:		12 that you're unavailable or you tell Mr. Eidelman	
13 Q. I'm going to show you what we've		13 that you're unavailable, but, yet, you show up.	
14 marked as Exhibit 20. Okay. And we start at the		14 And then here again, you're saying you're	
15 bottom, it is an e-mail from you dated August 2nd,		15 unavailable. I'm saying: I understand based on	
16 2018. And what do you write?		16 your representation that you're unavailable, we do	
17 A. I am not available on either of those		17 not expect your appearance. And then you respond	
18 dates.		18 and say: I'm telling you out of courtesy that I	
19 Q. Okay. And then if you turn to the		19 am unavailable. I'm under no obligation to tell	
20 next page, you say, what?		20 you. I'm doing it because I am a courteous person	
21 A. I have requested a hearing on this		21 and do not waste other people's time like you	
22 issue.		22 wasted my time. And then we've already read it	
23 Q. Okay. So if what you just said a		23 through.	
24 couple of moments is that you're very concerned		24 A. Um-hmm.	
25 about your name appearing in any sort of filing,		25 Q. So why didn't you say at that point,	

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31 (121 to 124)

	121		123
1 you know, I don't want there to be a court		1 that was the one that I left you the message about	
2 document, I want to resolve this motion, let's		2 it, I think it was the second one. On August	
3 pick a date?		3 14th, 2018, we had a conference call with the	
4 A. I can't tell you that. I was very		4 court. What do you recall about that	
5 upset at this time. There are laws about how many		5 conversation?	
6 subpoenas that you can do. You filed against me.		6 A. I recall -- let me think about this.	
7 I was lied about. You still had not responded		7 It started very late.	
8 about the Rule 11. What do you think an average		8 Q. Yes.	
9 person would do, Gillian?		9 A. And the deputy clerk had a dentist	
10 Q. What is the rule that you're		10 appointment and that's why he was late.	
11 referring to with subpoenas?		11 Q. Yes.	
12 A. I can't remember, 30-something.		12 A. And the judge -- was it Bowman, is	
13 Q. Okay.		13 it?	
14 A. Again, I did not prepare to talk		14 Q. Yes.	
15 about this.		15 A. Magistrate Stephanie Bowman, it felt	
16 Q. I understand, I understand. But I'm		16 to me her impression of this case was just to be a	
17 talking to you about this miscellaneous action, I		17 scheduler for a deposition. So when she started	
18 can ask you questions related to that.		18 out the call, she said -- I can almost quote her	
19 A. Sure, that's fine, but I'm telling		19 on this, because I do remember. She said: I'm	
20 you that I don't have the docket in front of me.		20 here to help you guys schedule a deposition.	
21 I don't have all of these --		21 Q. Okay.	
22 Q. I'm asking you what remember, what		22 A. And, clearly, I mean, that was a part	
23 you can tell me about --		23 of it, but during that call, I agreed to show up.	
24 A. I am doing my best, I am.		24 She didn't file an order. She didn't even -- she	
25 Q. So what is the rule about subpoenas?		25 hadn't even read any of the documents that had	
	122		124
1 A. You can issue one subpoena, you can		1 been filed, she did say that, and she was not	
2 show up, and you can give 7 hours, I think it's		2 going to rule on them until a later date. But at	
3 one day, and then in order to issue a second		3 that time, you also decided to issue a different	
4 subpoena, you need to get approval from the judge		4 type of subpoena, a second subpoena, with	
5 of the case wherever that case is.		5 different requirements.	
6 Q. Okay. Where did you learn that?		6 Q. Okay. So was there any conversation	
7 A. Cornell Law dot com.		7 on that call or any discussion during that call	
8 Q. I'll take that one back.		8 about a subpoena requesting documents?	
9 A. It's the one that I use the most.		9 A. You stated that you were going to	
10 Q. Okay.		10 create a second subpoena and add additional	
11 THE WITNESS: Do you mind, I need to		11 requirements for documents.	
12 take some medication?		12 Q. Okay. So I'm going to show you what	
13 MS. COOPER: Sure. Do you want to		13 has been marked as Exhibit 6.	
14 take a break? We have a 5-minute break and a		14 (Thereupon, Kelly Exhibit 6, a 1-page	
15 15-minute break.		15 letter dated 8/14/18 to Julie Kelly from Gillian	
16 THE WITNESS: What time is it?		16 Cooper, with attachment, was marked for purposes	
17 MS. COOPER: 2:30. Do you want to do		17 of identification.)	
18 the 15-minute now?		18 BY MS. COOPER:	
19 THE WITNESS: Sure.		19 Q. And what is this document?	
20 MS. COOPER: We'll go off the record.		20 A. This is your second subpoena.	
21 (Brief recess.)		21 Q. Okay.	
22 BY MS. COOPER:		22 A. Actually, probably your first to me	
23 Q. So at some point during this process,		23 maybe. My second subpoena for the Steven Barger	
24 we had a call with Judge Bowman on August 14th,		24 case.	
25 2018. It was a conference call. I don't believe		25 Q. Right. But it's the first one that I	

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32 (125 to 128)

	125		127
1	signed?	1	Q. So you looked in the rules for the
2	A. Sure.	2	timeline?
3	Q. Okay. And what is the date on the	3	A. I did. I have the Ohio Rules as well
4	subpoena?	4	as Magistrate Bowman's rules.
5	A. The 31st of August.	5	Q. Okay. So I'm going to show you
6	Q. Oh, to --	6	what's been marked as Exhibit 21. This is the
7	A. I'm sorry. It is dated August 14th.	7	request for order granting motion for sanctions.
8	I don't think I got it until August 19th or	8	A. Um-hmm.
9	something. I wrote down the date I received it in	9	Q. And you write in here at the bottom
10	the mail.	10	10 of the first page: More than 14 days have passed
11	Q. Okay. Because you agreed also on	11	11 since I filed my motion for sanctions and Your
12	12 that call that you would accept service via	12	12 Honor issued the above minute entry. So before
13	13 regular mail?	13	13 you filed this motion -- or did anybody assist you
14	A. Right.	14	14 in drafting this motion?
15	Q. Did you receive an electronic copy of	15	A. No.
16	16 the subpoena?	16	Q. Okay. Did anybody review this
17	A. I'd have to look through my e-mail.	17	17 document?
18	Q. Okay. And so I know you brought some	18	A. Again, my husband could have
19	19 documents with you today. We have not reviewed	19	reviewed, edited it, I don't know.
20	20 them. We got copies made. We will review them	20	Q. Okay. You said you checked the rules
21	21 before the end.	21	21 for this 14-day requirement?
22	A. It's probably in there if you sent	22	A. Um-hmm.
23	it. I think I printed all of your e-mails.	23	Q. What rule was it?
24	Q. So this was the subpoena that was	24	A. I think for responding to a motion.
25	25 issued for October 31st, 2018.	25	I don't know, but that's probably what it was.
	126		128
1	A. Um-hmm.	1	Q. Okay. If you turn to the last page,
2	Q. Thank you. Okay. So on August 29th,	2	page 7, the last page, at the top, can you read
3	3 2018, you filed a request for order granting	3	3 that, the first three lines?
4	4 motion for sanctions. Do you recall that filing?	4	A. On page 7?
5	A. I do.	5	Q. Yes.
6	Q. Okay. So in -- well, why did you	6	A. My children are confused and asking:
7	7 file this request?	7	7 Momma, why won't these people leave you alone? We
8	8 A. To try to speed things along.	8	already went downtown to see them and they were
9	Q. Okay.	9	9 not there. Why won't they leave us alone?
10	A. Again, I did not review the docket.	10	Q. Is that a direct quote?
11	11 I did not review these in the past couple of days.	11	A. Almost.
12	Q. That's fine.	12	Q. Okay. So what have your children --
13	(Thereupon, Kelly Exhibit 21, a	13	13 what have you told your children about this?
14	14 4-page, 2-sided Request for Order Granting Motion	14	A. I haven't told them much, but they're
15	15 for Sanctions, was marked for purposes of	15	wondering why Momma is always researching, having
16	16 identification.)	16	to go downtown, file documents. Their summer
17	17 BY MS. COOPER:	17	plans had been interrupted because I feel
18	18 Q. So you wanted to move things along.	18	threatened that someone is going to come knock on
19	19 How long did defendants have to respond to your	19	my door, someone is going to bring someone to this
20	20 motion for sanctions?	20	town for the second time because they know I feel
21	A. 14 days.	21	threatened by them.
22	Q. Okay.	22	Q. What makes you feel threatened?
23	A. I'd have to refer to my --	23	A. You read my OCRC. First of all, I
24	Q. Okay.	24	submit my things for my case and then all of a
25	A. -- local rules. I'm not sure.	25	sudden, Saul Ewing feels like they can just

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33 (129 to 132)

	129		131
1	subpoena me with a fake FedEx guy, which I get a	1	Q. Okay.
2	subpoena. The whole process I feel threatened by,	2	A. And then I went inside and I saw her
3	and I guess that's not an excuse for anything,	3	name on the book. I freaked out. I had to go see
4	obviously, I showed up.	4	my doctor. I was under medication.
5	Q. Okay.	5	Q. You went into the PNC building?
6	A. And then to hear that Mr. Eidelman	6	A. Yes.
7	can just lie about me in front of my past	7	Q. Okay. What time was that?
8	colleagues and then also -- or people I may have	8	A. I don't know.
9	known at First Data --	9	Q. Okay. Well, if you said you filed a
10	Q. Sorry, who --	10	11 a.m.?
11	A. -- on the record.	11	A. Um-hmm.
12	Q. Who was it that he --	12	Q. You got your coffee?
13	A. I don't know who was in the room.	13	A. Um-hmm.
14	Q. Okay.	14	Q. We'll confirm with the receipt.
15	A. And what I got from Mr. Shearer is	15	A. Um-hmm.
16	blacked out, but I saw what Mr. Eidelman said	16	Q. And then you walked to the PNC
17	about me.	17	building, and where did you see her name?
18	Q. Okay. All right.	18	A. It was on the sign-in sheet.
19	A. I mean, how would you feel if someone	19	Q. Which was where?
20	said that about you?	20	A. On the left -- on the right side,
21	Q. Okay. I'll take that back. Thank	21	it's past the bank.
22	you. So the date that we agreed upon for your	22	Q. Okay. So you walk in, you said the
23	deposition was August 31st, 2018 at --	23	bank is where, on the left side or the right side?
24	A. It was.	24	A. I think it's on the left. I can't, I
25	Q. -- at 12 noon?	25	can't remember.
	130		132
1	A. Sorry. Um-hmm.	1	Q. Okay. And then --
2	Q. Tell me about that day.	2	A. You know, that whole day is a blur
3	A. That day -- as you know from our	3	from what you did to me.
4	conversation with Magistrate Bowman, I did not	4	Q. So you walk in, where do you recall
5	agree to the requirements for the second subpoena,	5	the sign-in sheet being?
6	first of all, and I told you that on the call. I	6	A. On a desk. I --
7	did not have documents that would be of relevance,	7	Q. Okay. Where, where was the desk?
8	and I did not agree with that. I did try to get a	8	A. I believe it was to the right.
9	recording of that call, but, apparently,	9	Q. Okay.
10	Magistrate Bowman does not record her calls. So	10	A. There's a waiting area where you can
11	you knew that. So that morning, I filed -- I went	11	sit.
12	downtown, I filed a protective order at the court.	12	Q. Okay. So you go -- but you had
13	I think that's stamped 11:07, and this was one of	13	already filed the motion for protective order?
14	the issues I had with the clerks where they were	14	A. Um-hmm.
15	not filing timely, even if I waited there. So I	15	Q. So why did you come to the building?
16	know there was an issue with that getting through	16	A. I was waiting to hear. I don't have
17	on PACER. At that point, I went and I got a	17	electronic filing stuff, so my whole idea was I'd
18	coffee. I've got receipts if you need them.	18	go and if my protective order is filed, you will
19	Q. Okay. I will make a request for	19	let me know --
20	those receipts.	20	Q. Okay. So it --
21	A. Sure. And you know where the	21	A. -- if it was approved.
22	courthouse is, you know where the PNC building is.	22	Q. So you were going to come to the
23	I thought I saw Ms. Robin Ording. There's not	23	deposition and wait to see if it was going to be
24	many people that walk on the streets in	24	granted?
25	Cincinnati.	25	A. Yes.

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34 (133 to 136)

	133		135
1	MS. COOPER: Okay. Pause for just a	1	Q. So before you filed the motion for
2	second. We're not going to take a break.	2	protective order, did you tell anyone that you
3	(Off the record.)	3	would be filing that document?
4	BY MS. COOPER:	4	A. I can't remember.
5	Q. We can go back on. So the day of the	5	Q. Okay. So you filed it a little after
6	31st, you file the motion a little after 11. Did	6	11, you uploaded it to the cloud, and then did you
7	you talk to anybody about the filing?	7	have any phone conversations with anyone about it?
8	A. I did upload a copy of my stamped	8	A. I can't remember.
9	page to the cloud.	9	Q. Okay.
10	Q. But what do you mean?	10	A. I was nervous as it is. I don't
11	A. I just save all of my documents in	11	know.
12	the cloud.	12	Q. Okay. And so you testified that you
13	Q. How did you upload a copy of the	13	believe you saw Ms. Ordning on the street, and then
14	document?	14	you went into the PNC building and saw her name on
15	A. From my phone.	15	the sign-in sheet?
16	Q. So you took a picture --	16	A. Um-hmm.
17	A. Um-hmm.	17	Q. Did anybody tell you that Ms. Ordning
18	Q. -- of the filing page, and you did	18	was at the deposition?
19	what; how do you upload it?	19	A. No. I knew she was there, no one had
20	A. I hit Save and it saves it to my	20	to tell me.
21	files.	21	Q. You knew she was there how?
22	Q. Does anyone have access?	22	A. I just told you.
23	A. Yeah, I share, I share that with	23	Q. Okay. All right. But you would have
24	quite a few people.	24	filed the protective order or the motion for
25	Q. Okay. Your entire cloud or that	25	protective order regardless of whether Ms. Ordning
	134		136
1	document specifically?	1	1 was there?
2	A. I have separate folders that I share	2	A. Yes.
3	with separate people for certain things, and in	3	Q. Okay.
4	this instance, this filing was in regards to my	4	A. It's like I told you, the request for
5	OCRC case, so it went to my OCRC.	5	documents was invasive and burdensome to me as
6	Q. The motion for protective order that	6	well as threatening as this whole process.
7	you filed in this miscellaneous matter --	7	Q. Okay.
8	A. Is evidence for my OCRC case.	8	A. And you were aware of that.
9	Q. Okay. Why do you believe that?	9	Q. Okay. And so you waited until the
10	A. Because I have felt threatened, I	10	10 morning of the deposition to file the motion
11	have been harassed, and all of this is something I	11	11 for --
12	cannot talk about today.	12	A. Look, I don't have electronic filing
13	Q. Okay. Why can't you talk about that?	13	rights. I have responsibilities. I have a
14	A. Because it is in regards to my OCRC	14	family. I can't just, poof, file something. I'm
15	claim.	15	not an attorney. It takes me awhile to write this
16	Q. Okay. But why --	16	stuff.
17	A. We're not here to talk about my OCRC	17	Q. Okay. So I want to talk a little bit
18	claim.	18	about -- well, you filed a supplement on September
19	Q. We're not, but we're here to talk	19	14th, Document No. 13, but I want to start talking
20	about the 31st, in part.	20	about some of the content in here. You talk about
21	A. Um-hmm.	21	21 you were employed by First Data for 20 years. My
22	Q. So we are going to talk about what	22	22 final two supervisors were Plaintiff Barger and
23	happened on the 31st and what you discussed about	23	23 then Ms. Ordning. So tell me a little bit about
24	24 that deposition that day.	24	24 your relationship with Mr. Barger when he was your
25	A. Okay.	25	25 supervisor.

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35 (137 to 140)

	137		139
1 A. So I first started working with		1 A. I believe so.	
2 Mr. Barger, I would say, maybe spring, early		2 Q. Okay. Did you receive an increase in	
3 summer of 2014. He was a consultant. He came		3 salary or a bonus?	
4 on -- Joe Plumeri, who was I believe on the board		4 A. I received additional	
5 at First Data, brought him on to really		5 responsibilities from a VP who was going to be	
6 transform -- basically, keep our sales force from		6 working I think a third of the time or something	
7 becoming just a new rate in a terminal to doing		7 to start her own brewery. I'm not sure of the	
8 really business services and doing more		8 details, but I was taking on her responsibilities.	
9 consultative sale. I assisted him. Bryan Fricke,		9 So I was given the director title along with a	
10 I don't know if you've heard that name, he was my		10 base salary increase, and I think because it moved	
11 supervisor at the time, and he reported to Joe		11 me up a level, I was eligible for a different type	
12 Plumeri, and Steve was a consultant. So we all		12 of a bonus.	
13 worked together on certain road shows, writing		13 Q. Okay. Did you receive an additional	
14 curriculum, writing programs, doing measurement on		14 bonus?	
15 the effectiveness of programs, so on and so forth.		15 A. I did not.	
16 My first meeting with Barger was -- I		16 Q. Okay. So when Mr. Barger oversaw the	
17 mean, he was a man of great charisma. Even over		17 group, how often did you see him in person?	
18 the phone, he would just -- you didn't type or		18 A. Maybe once or twice a year, not	
19 multi-task, you listened to every word that he had		20 often. I did not work in the same office as he	
20 to say. He was an incredible speaker, very		21 did.	
21 inspirational, and you respected him immediately.		21 Q. Okay. So how did you usually	
22 When Mr. Fricke left the business, they did not		22 communicate?	
23 fill his position immediately. They had		23 A. Videoconference. We had a couple of	
24 Mr. Barger step in.		24 different platforms that we utilized, the phone	
25 Q. Okay.		25 almost a couple of times a day at first. He was	
	138		140
1 A. And --		1 learning about the business. He was learning	
2 Q. When was that?		2 about, you know, how I worked, my team.	
3 A. I want to say maybe late summer 2014,		3 Q. And what was he learning about?	
4 maybe in the summer. I don't have exact dates.		4 A. What we did.	
5 Q. So what was your title at this time?		5 Q. Okay.	
6 A. I was a manager of instructional		6 A. How First Data worked, how we could	
7 design. It probably said manager of training.		7 all work together. Bryan Fricke left abruptly,	
8 Q. Manager of training?		8 so, you know, he had to come in and learn. It was	
9 A. Um-hmm.		9 quite difficult when someone new takes on.	
10 Q. Okay. How long did you have -- did		10 Q. So I guess tell me a little bit about	
11 you hold that title?		11 your day-to-day type work when Mr. Barger took	
12 A. Oh, gosh, I don't know.		12 over as your head.	
13 Q. Okay. So it wasn't -- so when did		13 A. So at the time, gosh, we would have	
14 you -- was your title always manager of training?		14 been starting to write a completely new curriculum	
15 A. For a long time.		15 for a new hire program for our sales. They	
16 Q. Okay. Did it ever change after		16 changed the name. It was the time we were	
17 summer of 2014?		17 changing them from account executives to business	
18 A. It did.		18 consultants, so that was rewriting an entire	
19 Q. When?		19 program from scratch. So we would work on that.	
20 A. This was post Mr. Barger.		20 We also had various things with the	
21 Q. Okay. So when did it change?		21 corporate university. We had gone through --	
22 A. Under Ms. Robin Ording.		22 prior to Mr. Fricke coming on board, we had gone	
23 Q. Okay. What did it change to?		23 through a huge shift when Frank Bisignano came on	
24 A. It changed to director of training.		24 to the company. We had had an amazing online	
25 Q. So was that a promotion?		25 university called Mind Spring and there was a lot	

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36 (141 to 144)

1 of pieces that my team was responsible for that we 2 had to pick up and with a lot of people exiting 3 the company. So there were various tasks. But 4 mainly, my group was responsible for instructional 5 design and development as well as measurement for 6 the sales organization training.	141	1 individually. He knew everybody's kids' names, 2 what sports they did, their birthdays. I mean, he 3 just had a fantastic memory. And he really showed 4 concern, genuine concern, for people and that was 5 kind of his thing, genuine concern, and he pushed 6 that out to the entire corporation. And, you 7 know, while I didn't have -- you know, I wasn't 8 there on site with him, you know, he was always a 9 very supportive manager. You know, you could tell 10 he had tons of experience.	143
7 Q. What does that mean, measurement? 8 A. You measure the effectiveness of your 9 practice. So basically, you do a training 10 program, you want to see how that impacted, you 11 know, your learners, not just immediately. You 12 know, everybody can do a sheet, yeah, the food was 13 great, you know, but we went further with that, so 14 really measuring, you know, what did they 15 comprehend, and then beyond that, how did they 16 change their behaviors on the job.	142	11 Q. Okay. So it's clear that you believe 12 that he really cared about his people and took 13 time to get to know them. Tell me a little bit 14 about his management of the group. Did he -- was 15 he a micro manager, did he delegate, how did he 16 manage?	144
17 Q. Okay. And so was this a new process 18 that was implemented when Mr. Barger took over? 19 A. No, no. This is common adult 20 learning. These are common practices. 21 Q. It's a common practice in -- 22 A. Yeah. What was new when Mr. Barger 23 took over was Joe Plumeri's vision, as well as him 24 I'm sure, was to make it the First Data way, not 25 just this was our process. It was consultative	143	17 A. So I think at first, he was micro 18 manager a little bit. And, you know, it's quite 19 common when people take over organizations or 20 different groups, they want to understand why 21 you're doing what you're doing, and they might 22 have ideas to, you know, make that a better 23 process or change it or move things around. So 24 you'll see in my documents, I do get frustrated 25 with him because he wanted to know what I was	145
1 selling, but the First Data way, on how to sell 2 and really getting that out to all of our business 3 consultants. So it was a transformation. 4 Q. Okay. How many managers were I guess 5 under Barger, like same level as you, when 6 Mr. Barger took over? 7 A. Oh, maybe one or two. 8 Q. Okay. 9 A. I can't really remember, maybe one or 10 two. 11 Q. Do you remember who they were? 12 A. I think David Short was one, and 13 Michele Mohan may be another. 14 Q. Okay. When Mr. Barger took over, 15 what was the head count of the group? 16 A. I wouldn't -- I wouldn't remember 17 that. 18 Q. Okay. 19 A. I mean, gosh, that was, what, four 20 years ago. 21 Q. Yeah. Okay. All right. Well, so 22 Mr. Barger takes over. How did the group change 23 under his leadership? 24 A. It was amazing. I mean, he took the 25 time to get to know people. He met with them	142	1 doing on a Sunday when I was cooking dinner and he 2 wanted an update on something. So you know, at 3 first, you know, it's kind of -- you know, he was 4 a little micro manager, but then he -- once it's 5 almost like he got to trust you, then, if you did 6 have situations that you needed his help on, he 7 wouldn't want to solve those for you, he would 8 want to talk you through you coming up with your 9 own solution, and I learned quite a bit from him 10 in some of those processes.	144
	143	11 He gave me an awesome project. It 12 was -- it had a code name, I won't mention it, but 13 it did turn out to be the Apple Pay when First 14 Data had that roll out, and he allowed me to be a 15 part of that huge project and that was just an 16 incredible experience for me.	145
	144	17 Q. What was your role in that project? 18 A. I was responsible for learning the 19 product and learning all of the training and 20 curriculum.	146
	145	21 Q. About what time was that? 22 A. I want to say 2015. 23 Q. Okay. 24 A. Yeah, but I'm not sure. 25 Q. Okay. What did some of your	147

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37 (145 to 148)

<p>1 colleagues think about Mr. Barger's leadership; 2 did you ever have any conversations with them? 3 MR. SHEARER: Objection. You can 4 answer. 5 THE WITNESS: Yeah, I can't -- I 6 can't speculate what other people might think or 7 say. 8 BY MS. COOPER: 9 Q. That's fine. But did you have any 10 conversations with your colleagues about 11 Mr. Barger? 12 A. I'm sure we did, yeah. 13 Q. Okay. Did your colleagues tell you 14 that they liked the group under his leadership? 15 A. Again, I don't want to, you know, 16 speculate what or misinterpret what they may have 17 or may not have said. I really don't remember. 18 Q. Okay. But you did have conversations 19 about his leadership? 20 A. I mean, it was very positive, you 21 know, of the team. 22 Q. Okay. Did anyone ever complain to 23 you about his leadership? 24 A. Not that I can think of. 25 Q. Okay. So you don't recall any</p>	<p>145 1 there was, but let me see if I can come up with an 2 example. Maybe Matthew McDonald. 3 Q. Okay. And when was -- when were 4 those conversations? 5 A. Probably 2015. 6 Q. What were some of the things that you 7 remember about the conversation? 8 A. He was -- he challenged him, 9 challenged. Matthew reported to me but had a lot 10 of guidance from Steve, and he really appreciated 11 that. 12 Q. Did any employee ever complain to you 13 about Mr. Barger? 14 A. Yes. 15 Q. Okay. Who complained to you? 16 A. It was Nick Mantia. 17 Q. Okay. What did he complain about? 18 A. Nick had some problems, and I think 19 he was just really looking for Steve to be there 20 every day for him and not push him and challenge 21 him. He just wanted to be there and have a task 22 list of 15 things to do a day and be done, not to 23 have to think and not have to -- again, Nick may 24 have been under the influence of some certain 25 things, but I -- I don't know.</p>
<p>146 1 employee complaining to you about Mr. Barger's 2 running of the group? 3 A. Maybe he was hard on them. 4 Q. Okay. 5 A. Again, I don't -- I don't -- I don't 6 really remember. 7 Q. Okay. 8 A. I mean, they may have had similar 9 experiences. Again, I don't want to speculate 10 what anyone else went through. 11 Q. What do you mean, similar 12 experiences? 13 A. Like how he was hard on me at first 14 and challenged me. 15 Q. Okay. So are there any particular 16 employees that you're thinking of when you talk 17 about -- you know, I understand that you don't 18 want to speculate what they thought about him, but 19 it seems that you've had some conversations 20 about -- 21 A. Oh, no. I'm just -- I don't know. 22 Q. Okay. So you can't recall a 23 conversation with any colleagues about 24 Mr. Barger's leadership? 25 A. Let me think for a second. I'm sure</p>	<p>148 1 Q. Okay. You mentioned earlier about 2 Nick Mantia, that there was some sort of issue 3 with Rhonda Johnson. What was that issue? 4 A. I don't know if it was an issue. I 5 don't understand their relationship. 6 Q. Okay. Just what do you mean by that, 7 what is their relationship? 8 A. I just remember that he had calls 9 with her. He was always in her office, and I 10 think it's when he was sick. I'm not sure. 11 Q. Okay. All right. So Nick Mantia 12 complained to you at some point about Mr. Barger? 13 MR. SHEARER: Objection. 14 BY MS. COOPER: 15 Q. Or you had conversations with 16 Mr. Mantia about -- 17 A. Again, I don't want to speculate what 18 he was going through. I'm sure it's -- 19 Q. Okay. 20 A. It's none of my business. 21 Q. Any other employees complain to you? 22 A. Not that I remember. 23 Q. Okay. There's one thing that you put 24 into a filing on September 13th when you filed -- 25 it's Docket No. 17, it's a reply in support of</p>

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38 (149 to 152)

	149		151
1 motion for sanctions, and you asked for 2 terminating sanctions. What are terminating 3 sanctions?		1 says: Defendant's motion to compel is granted, 2 Ms. Kelly must appear for deposition on October 3 15, 2018 at 12 noon. Ms. Kelly must bring any and 4 all documents in her possession as requested in 5 the subpoena previously issued for the August 31, 6 2018 deposition. And then the judge goes through 7 some more specifics about the breaks, et cetera.	
4 A. I believe they're basically to 5 eliminate someone's rights to do something.		8 Do you recall receiving this order?	
6 Q. So what rights were you seeking to be 7 eliminated?		9 A. Yes.	
8 A. I can't remember. I'd have to read 9 the context. It may have been something I saw on 10 Google Cornell. I don't know.		10 Q. Okay. Did you talk about this order 11 with anyone?	
11 Q. Okay.		12 A. I'm sure my husband and I went over 13 it.	
12 (Thereupon, Kelly Exhibit 7, a 13 2-page, 2-sided Order, was marked for purposes of 14 identification.)		14 Q. Okay. Was there any part of this 15 order that you found to be confusing?	
15 BY MS. COOPER:		16 A. Not confusing, but it does not feel 17 like it's complete. It does not state why I did 18 not show up for the August 31st, so it makes it 19 sound like I just decided not to show up, when 20 there were contributing factors to why I did not 21 show up.	
16 Q. I'm going to show you what has been 17 marked as Exhibit 7, which is another lesson to me 18 that I shouldn't pre-mark exhibits at the 19 beginning of the deposition because it changes 20 things around a little bit. Okay.		22 Q. Okay. Which were what?	
21 So do you recognize this document?		23 A. For you bringing people to 24 Cincinnati.	
22 A. I do.		25 Q. Okay. So the judge issues this	
23 Q. This is Docket No. 25?			152
24 A. Um-hmm.		1 2018. Okay. So the court writes that the matter 2 is currently before the court based upon the 3 filing of a motion to compel the deposition of 4 you. The judge goes through a little bit of the 5 procedural history. She writes: The matter was 6 previously before the court for a telephone status 7 conference to discuss the above-mentioned motions. 8 At that time, Ms. Kelly agreed to appear for a 9 deposition on August 31st, 2018, and the Court 10 requested further briefing on the motion for 11 sanctions. Ms. Kelly then filed a motion for an 12 order on her motion for sanctions as well as a 13 motion for protective order. Ms. Kelly did not 14 appear for her deposition on August 31, 2018, 15 which led the Court to schedule another conference 16 for September 18th.	
17 Okay. I'm going to skip through a 18 couple of lines. And then on page 2, the first 19 full paragraph, it says: Ms. Kelly's motion for 20 protective order is also denied, and Ms. Kelly is 21 ordered to bring with her to the deposition the 22 documents in her possession that are requested in 23 the subpoena for the August 31, 2018 deposition 24 that was served on August 20th, 2018.	150	1 order. Was there anything else that you thought 2 needed -- that was confusing or you did not 3 understand?	
25 And then the bottom on page 2, it		4 A. Yes. Because the motion to compel 5 was originally filed for a subpoena that I showed 6 up for, so I don't know -- I don't understand how 7 a second subpoena could be issued. It's very 8 confusing. The first one is still out there.	
		9 Q. Okay. But then in August, we 10 discussed a new subpoena or a subpoena for August 11 31st that would command documents?	
		12 A. Which I objected to.	
		13 Q. Right, you objected to bringing 14 documents, and then you didn't appear for the 15 deposition. But I'm asking specifically what part 16 of this order did you find confusing?	
		17 MR. SHEARER: Objection.	
		18 THE WITNESS: Objection, yeah. I 19 just didn't agree with it and that's why I filed 20 what I did.	
		21 BY MS. COOPER:	
		22 Q. Got it. Okay. So what do you do 23 when you don't agree with an order, what is the 24 procedural step, when there's an order issued?	
		25 A. I would look it up online, and I'm	

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39 (153 to 156)

	153		155
1	going to file my reasoning for why I do not agree	1	have to take some more -- I might have to take
2	with what the judge ordered, and it goes up to the	2	something.
3	next level.	3	Q. Do you need to take a break? We have
4	Q. Which is what?	4	one more 5-minute break; if you want to take it
5	A. To the judge.	5	now, we can do it now.
6	Q. But to which judge?	6	A. No, let's keep going.
7	A. In this case.	7	Q. Okay. So in the subpoena that was
8	Q. Because this is -- I'm sorry.	8	served on August 14th, 2018 that the judge ordered
9	A. It's Magistrate Bowman, and it's	9	you comply with, we requested documents?
10	10 going to go to the judge on the case to review,	10	A. Um-hmm.
11	11 which is Susan Dlott.	11	Q. On October 2nd, 2018, you e-mailed
12	Q. Okay. Do you understand that Judge	12	Gary Eidelman and myself and objected to the
13	Bowman is a magistrate judge, she is --	13	document production?
14	A. I do.	14	A. Um-hmm.
15	Q. She is a judge?	15	Q. How did you know about objections to
16	A. Um-hmm.	16	document requests?
17	Q. Okay. So what is that process called	17	A. Well, I don't get to talk to you
18	when you want to take it --	18	about things, so I figured I should e-mail them.
19	A. An appeal.	19	Q. What do you mean?
20	Q. An appeal. Okay. How did you learn	20	A. I can't pick up the phone and say, I
21	about the process of how to, as you put it, appeal	21	object to this, I object to that, so I --
22	the magistrate judge's order?	22	Q. Why can't you pick up the phone and
23	A. My crash course in Law 101 this	23	call us?
24	summer.	24	A. Because I'm representing myself in
25	Q. Okay. Did you talk to anybody about	25	this and everything seems to be more formal. I
	154		156
1	that process?	1	I don't know the process.
2	A. I don't know.	2	Q. Okay. But did anyone tell you that
3	MR. SHEARER: Objection. To the	3	you couldn't pick up the phone and call us?
4	extent that you spoke to counsel and received	4	A. No.
5	advice, then, you shouldn't answer that. Proceed.	5	Q. Okay. Did you think about calling us
6	THE WITNESS: I am pro se for this	6	about --
7	whole case that we're talking about today, which I	7	A. No, no, I did not.
8	did not know we were talking about, that was very	8	Q. Okay. So you sent us an e-mail and
9	misleading in the first place, and I'm trying to	9	you put objections in that e-mail?
10	represent myself. If I talk to other people about	10	A. (Nodding head.)
11	it, I'm allowed to do that.	11	Q. Where did you learn about document
12	BY MS. COOPER:	12	objections or objections to documents?
13	Q. Right, you are allowed to do that,	13	A. Online, maybe someone I spoke with, I
14	and I am allowed to ask you about that. I'm not	14	don't know. I can't remember.
15	saying that you're not allowed to talk to anybody	15	Q. Okay. And what do you know about
16	about it, but I am allowed to ask you about it.	16	objections to document requests?
17	A. That's fine.	17	A. I had objections because the
18	Q. That's what I'm doing, I'm asking you	18	documents -- most of the documents that I have, I
19	about who you spoke to about this order.	19	was able to find some, are in relation to my OCRC
20	A. I spoke to I don't know how many	20	case.
21	people. I don't know who they were. I can't	21	Q. So I do want to --
22	remember this whole -- especially this stuff	22	A. So let me ask you this, how many of
23	because it's been such a blur over what you've	23	my other colleagues have you subpoenaed, deposed,
24	done to me this whole summer. I mean, I just --	24	and asked for documents, what are their names?
25	I'm getting really hot right now too. I might	25	Q. Okay. I want to make --

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40 (157 to 160)

	157		159
1 A. I don't think it happened.		1 (Thereupon, Kelly Exhibit 22, a	
2 Q. So have you talked to other people		2 2-page, 2-sided e-mail dated 10/2/18 to Gary	
3 about --		3 Eidelman from Julie Kelly, was marked for purposes	
4 A. I haven't. That's why I'm asking		4 of identification.)	
5 you, who else was deposed?		5 MS. COOPER: I also want to point out	
6 Q. Okay. But you said you don't think		6 for the record that Exhibit 6, I think when it	
7 that happened, so --		7 printed, it might be missing a page. I will	
8 A. I don't. You won't answer me.		8 confirm that on the next break. I just wanted to	
9 Q. It's not my deposition. I do want to		9 make a note of that. I think it might be missing	
10 make very clear that the Attachment A to the		10 a page of the subpoena.	
11 subpoena, the first --		11 BY MS. COOPER:	
12 A. Which subpoena are we talking about?		12 Q. Okay. So do you recognize this	
13 Q. The one on August 14th, Exhibit 6,		13 document?	
14 says: You are not being asked by way of this		14 A. I do.	
15 subpoena or otherwise to produce any documents or		15 Q. What is this document?	
16 communications, e-mail, electronically stored or		16 A. And this is the e-mail I sent to you	
17 otherwise, relating to the charge of		17 with my document production objections --	
18 discrimination that you filed with the Ohio Civil		18 Q. Okay.	
19 Rights Commission, Charge No.		19 A. -- on Tuesday, October 2nd.	
20 DAYB-6-27240-0517-2018, including, but not limited		20 Q. Okay. Did you draft this e-mail?	
21 to, any communications you have had with the law		21 A. I did.	
22 offices of Shawn Shearer, Shawn Shearer, Esq.,		22 Q. Did anybody assist you in drafting	
23 and/or Brenda Barger regarding the charge of		23 this e-mail?	
24 discrimination. So it's pretty clear that we are		24 A. I don't believe so, but I don't	
25 asking for documents, but we are making		25 remember.	
	158		160
1 specifically clear that it's not related to that		1 Q. Okay.	
2 charge.		2 A. May have had some editing.	
3 So I'm going to ask you again, why		3 Q. By who?	
4 did you feel that you needed to object to the		4 A. Probably my husband.	
5 document request?		5 Q. Okay. In the second paragraph, you	
6 A. Because it's burdensome for me to		6 write: My understanding is that these are fairly	
7 have to sort through my e-mail. You gave me how		7 standard general objections to document production	
8 many categories on that document?		8 requests. How did you come to that belief?	
9 Q. Okay. So let me read them, then.		9 A. On the Internet, I'm pretty sure.	
10 A. And if I can just add to that, First		10 Q. Okay.	
11 Data has a copy of everything I've ever done for		11 A. My crash course 101.	
12 the past 20 years, and I would assume that would		12 Q. Thank you. So at some point on	
13 be what is relevant to the Barger case, which		13 October 2nd, you filed a Rule 72(a) motion. What	
14 we've asked, what, one question about so far.		14 is a Rule 72(a) motion?	
15 Q. Okay. All right. But the objections		15 A. This is my asking Judge Dlott, the	
16 that you put in the e-mail dated October 2nd,		16 higher-up judge, to take a look at my reasoning	
17 2018, where did you find those?		17 for objecting to Judge Magistrate Bowman's order.	
18 A. Probably the Internet.		18 Q. Okay. And what was your reasoning	
19 Q. Okay. Did you copy and paste them		19 for objecting to Judge Bowman's order?	
20 out of a document?		20 A. Basically, invalid subpoena.	
21 A. Probably.		21 Q. What about it was invalid?	
22 Q. Did somebody send them to you?		22 A. Because I went to -- I showed up for	
23 A. No. I think I got them online. I		23 the first subpoena. Had I not shown up, you	
24 can't remember.		24 probably would have compelled me, but I did show	
25 Q. Okay.		25 up, and then you issued a second more burdensome	

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41 (161 to 164)

	161		163
1 subpoena. I felt threatened through this entire		1 MR. BYRNE: Thank you.	
2 process, and no one seems to be listening to me.		2 BY MS. COOPER:	
3 Q. Okay.		3 Q. Do you recognize this document?	
4 A. And I'm asking for help.		4 A. I do. You sent this to me.	
5 Q. How many copies -- you said that you		5 Q. Okay. Did you receive a copy of this	
6 received an excerpt of the Rule 26(a) initial		6 from anyone else?	
7 disclosures?		7 A. I think I got a copy in the mail.	
8 A. Yes. We reviewed that earlier.		8 Q. From me or from --	
9 Q. Right. How many copies have you		9 A. No, from the court.	
10 received of those initial disclosures?		10 Q. Okay. When the court -- since you	
11 A. I think the one from you.		11 don't have electronic filings, when the court	
12 Q. Okay.		12 issues an order, how do you find out about it?	
13 A. I think -- I know for a fact the full		13 A. I get a copy in the mail or I'll	
14 one came from you.		14 update PACER in the morning.	
15 Q. Okay.		15 Q. Okay.	
16 A. I thought -- it was very eye-opening		16 A. I'll just like refresh.	
17 to see all of those other names on that 26(a)		17 Q. Okay.	
18 disclosure who -- you know, were they put through		18 A. So if something is posted, I don't	
19 this same harassment that I'm being put through?		19 see the document. I can't click on the documents,	
20 Q. But you received one copy from		20 but I'll see like the summary.	
21 Mr. Shearer. Have you received any other copies		21 Q. So that you can see that something	
22 from Mr. Shearer?		22 has been entered, but you don't necessarily see	
23 A. I received like an edited,		23 what the document is?	
24 slimmed-down copy from Mr. Shearer. If there was		24 A. Right.	
25 something else, maybe, but I don't know. I don't		25 Q. Okay. You update PACER how often?	
	162		164
1 I think so.		1 A. Maybe just in the morning.	
2 Q. Because in your 72(a) motion on page		2 Q. Okay.	
3 11, you write: Mr. Eidelman and Ms. Cooper remain		3 A. Because I guess it doesn't do a live	
4 listed as my counsel on their 26(a) disclosure		4 update. You have to pay for that, and I don't	
5 until September 27, 2018. How do you know that?		5 have the means to pay to update the web page --	
6 MR. SHEARER: Objection to the extent		6 Q. Okay.	
7 that that requires her to testify as to any		7 A. -- throughout the day.	
8 conversation with counsel.		8 Q. Okay. So this is Judge Dlott's order	
9 BY MS. COOPER:		9 dated October 9th, 2018?	
10 Q. Okay. You may answer.		10 A. Um-hmm.	
11 A. I may have had a conversation, but it		11 Q. And the order says that: Ms. Kelly	
12 was in regards to what I'm filing for my OCRC		12 must bring any and all documents in her possession	
13 case.		13 as requested in this subpoena previously issued	
14 Q. Okay.		14 for the August 31, 2018 deposition. And it sets	
15 (Thereupon, Kelly Exhibit 8, a		15 forth, you know, confirming that the motion to	
16 2-page, 2-sided Notice of Electronic Filing dated		16 compel is affirmed and that the 72(a) motion is	
17 10/9/18, was marked for purposes of		17 denied.	
18 identification.)		18 Did you discuss this order with	
19 BY MS. COOPER:		19 anyone?	
20 Q. I'm going to show you what we marked		20 A. Yes, because I was confused because	
21 as Exhibit 8.		21 she didn't specifically state what was under this	
22 MR. BYRNE: Can I request real quick,		22 Docket 21. So basically, when I asked her to	
23 the last document dated the 27th, did that have a		23 review this, I wanted to know exactly what she was	
24 number?		24 going to rule for the motion to compel, which was	
25 MS. COOPER: 22.		25 No. 1. I have asked for clarification, I'm still	

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42 (165 to 168)

	165		167
1 waiting on that.		1 Q. Have you reached out to him at all?	
2 Q. I'm sorry. What do you mean? I'm		2 A. I may have.	
3 not sure --		3 Q. Has he reached out to you?	
4 A. Because it doesn't specifically say		4 A. I don't know, maybe.	
5 what she's ruling on the motion to compel.		5 Q. Okay. So you haven't worked for the	
6 Q. But the order says it's affirming the		6 company since November 30th, 2017. Since that	
7 judge's order to compel your deposition; is that		7 time, how many conversations have you had with	
8 correct?		8 Mr. Barger?	
9 A. Um-hmm.		9 A. Oh, I don't know. I can't tell you	
10 Q. So what other clarification --		10 that.	
11 A. It doesn't state the docket. I just		11 Q. I mean, one -- I mean, it's a little	
12 asked for clarification, and you'll see it posted.		12 less than a year, about 11 months.	
13 I just -- it's on PACER.		13 A. I honestly don't know.	
14 Q. Okay. But why do you need to know		14 Q. But you have spoken to him?	
15 which docket?		15 A. Of course.	
16 A. I wanted to be able to adequately		16 Q. Okay. At any time did he or somebody	
17 prepare for today, so I was asking her for		17 acting on his behalf contact you about being a	
18 clarification also on which subpoena we were		18 witness in this case?	
19 referring to. Obviously, it hasn't been either		19 A. Did he -- can you repeat the	
20 subpoena because we haven't really talked about		20 question?	
21 the Barger case. So I'm not sure what that means.		21 Q. Did Mr. Barger ever contact you about	
22 Q. It says, though, the subpoena		22 being a witness in this case?	
23 previously issued for the August 31, 2018		23 A. No.	
24 deposition; is that correct?		24 Q. Did Mr. Barger's attorneys ever	
25 A. That's what it states.		25 contact you about being a witness in this case?	
	166		168
1 Q. Okay. So with all of the filings in		1 A. No.	
2 this case that you have filed in the miscellaneous		2 Q. Did Brenda Barger ever contact you	
3 action, how many people have you discussed the		3 about being a witness in this case?	
4 motions or the writings or the research with?		4 A. No.	
5 A. Oh, I don't know.		5 Q. Okay. Did you ever receive any sort	
6 Q. You know, one, two, five, ten?		6 of questionnaire about your employment with First	
7 A. I'm not sure, and anyone can read it		7 Data from either Mr. Barger or his attorneys?	
8 online.		8 A. No.	
9 Q. Right.		9 Q. Okay. Did Mr. Barger ever contact	
10 A. It's public.		10 you about a letter of recommendation?	
11 Q. I'm curious about who you discussed		11 A. Yes.	
12 it with.		12 Q. Okay. When was that?	
13 A. Yeah. I'm not sure.		13 A. Oh, I don't know, maybe last summer,	
14 Q. Okay. So you've discussed it with		14 last spring. I don't know.	
15 all of these people. What have you discussed with		15 Q. Were you still working for the	
16 Steve Barger?		16 company when he reached out to you?	
17 A. About this? Nothing.		17 A. I don't know. Probably.	
18 Q. Why not?		18 Q. That e-mail, is it in the documents	
19 A. I don't call -- I don't talk to him		19 that you provided here today?	
20 every day. He's a busy man.		20 A. Yeah.	
21 Q. Yes. But this is his case, it's his		21 Q. So what did he ask you for?	
22 lawsuit, so why not talk about this case with --		22 A. Just a letter of recommendation or	
23 why talk about this case with other people and not		23 maybe it was a LinkedIn recommendation, I can't	
24 him?		24 remember.	
25 A. I don't know.		25 Q. Okay.	

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43 (169 to 172)

	169		171
1	(Thereupon, Kelly Exhibit 23, a	1	in training?
2	1-page document titled Confidential, from Julie	2	A. Well, when I first started working
3	Kelly, Bates SBB-00780, was marked for purposes of	3	with him, we were taking one of his -- I'm not
4	identification.)	4	sure if it was published programs, we were taking
5	BY MS. COOPER:	5	one of his programs that he wrote and
6	Q. I'm going to show you what has been	6	transitioning that into something that he was
7	marked as Exhibit 23. Do you recognize this	7	going to facilitate and train all of the First
8	document?	8	Data sales force for. And when I saw that
9	A. I do.	9	program, it was amazing. It was one of the best
10	Q. What is this document?	10	10 I've ever seen for involving people. It wasn't
11	A. This is what I wrote for Steve.	11	11 just a PowerPoint you throw up on the screen, you
12	Q. Okay. And so for the record, this	12	12 know, people were doing activities and he was
13	has been marked as SBB 000780, that's the Bates	13	13 getting involved with people. And when I had the
14	number on this document. And this is an e-mail	14	14 opportunity to work with him on that to bring it
15	that you wrote or looks like a letter that you	15	15 into First Data, it really led me to see exactly
16	wrote about Mr. Barger. So you wrote: During	16	16 what his experience was right there in front of
17	this time, Steve was a leader like none other.	17	17 me.
18	Tell me a little bit about how you believe Steve	18	Q. What was the name of that program?
19	or Mr. Barger was a leader like no other.	19	A. I think it was: It's Your Business,
20	A. I think I had talked about this a	20	Own It, something like that.
21	little bit earlier, but he really had a	21	Q. Okay. And that was -- you said it
22	charismatic aura around him. Is that what I	22	wasn't a PowerPoint. I'm just trying to get an
23	wrote?	23	idea of what it was.
24	Q. Yeah.	24	A. I mean, there were different
25	A. I just saw that. And, you know, he's	25	components to it. There were worksheets, there
	170		172
1	very respectful. He knew training, you could tell	1	were workbooks that you went there, there were
2	he had done it for many years, but he also kept up	2	some virtual pieces, some video, some lecture, all
3	with technology. He kept up with the changing of	3	different types of things.
4	the generations, and he really understood a	4	Q. Was this something that was created
5	passion of mine, which was measuring the	5	when he was at First Data?
6	effectiveness of training, and really pushed us to	6	A. Yeah.
7	look for new and innovative ways to have blended	7	Q. Okay. So were you involved --
8	learning programs, and virtual learning programs,	8	A. Oh, originally? I'm not sure. We
9	and hands-on experience training.	9	came in and this was something that he -- you
10	Q. What is a blended learning program?	10	10 could tell he was passionate about. I'm sure he
11	A. So that might be something where if	11	11 built it, and he's trained millions or probably
12	you think about maybe you take a refresher law	12	12 thousands of people on similar concepts.
13	course about ethics online maybe through	13	Q. Okay. Are you aware of any other
14	University of Phoenix or something, right, and you	14	positions he's had that involved training besides
15	go on and you get into a classroom with other	15	the position that he's had at First Data?
16	people and you have an instructor, might be on	16	A. I'm sure I've read his biography and
17	video, and you're learning about your topics, and	17	17 talked to him about it before, but not off the top
18	then you go off and do an assignment in a group,	18	18 of my head.
19	maybe in a chat room. So it's pulling in many	19	Q. Okay.
20	different types of learning.	20	A. No, sorry.
21	Q. Okay. You said that, you know, it	21	Q. You also mentioned, you know, him
22	was obvious that he had a lot of experience in the	22	staying up-to-date or ahead of the technology.
23	training area.	23	A. Um-hmm.
24	A. Um-hmm.	24	Q. So tell me a little bit about that.
25	Q. What do you know about his experience	25	What sort of technology are you talking about, how

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44 (173 to 176)

	173	175
1 did he, you know, stay ahead of it? 2 A. So he was really receptive to 3 different types of technology, and, you know, we 4 had the implementing of the Clover device, right, 5 and how that, you know, can track all types of 6 things that merchants are doing. And I'm not sure 7 what it's called now, but there was a product 8 called Insights that, you know, is really 9 tracking everything merchants do, and, you know, 10 being able to -- you know, then merchants can I 11 guess buy a subscription to it and see all of this 12 data. And, you know, he would catch onto the 13 different technologies. 14 We also had a different website that 15 we put together. We also had this fantastic 16 innovative learning lab that we put together where 17 the students, they were new hires, they would go 18 through different scenarios that we wrote to give 19 them hands-on experience on what they would see 20 out in the real world, and we were tracking that 21 with iPads and different experiences. And he 22 really allowed us to do some really cool things. 23 Q. Okay. 24 A. I'm probably rambling, I'm sorry. 25 Q. No. Some of it I asked because	1 business solutions versus a better rate and fee 2 with a little swiper. 3 Q. Okay. And so how was the training 4 group involved in, I guess, the rollout of that 5 technology or the implementation of that 6 technology? 7 A. Yeah. So back then, this was 8 probably 2012, maybe '13, early '13, when we first 9 got involved, and this is pretty standard on how 10 we used to work when there was a new product or 11 software that was rolled out. Training got 12 involved very upfront so that we could understand, 13 and we could either work with the vendors or work 14 with the internal product folks who were putting 15 out the product, and we would really learn it 16 because we then had to determine what type of 17 learning intervention needed to happen to transfer 18 that new product, how they were going to sell it. 19 And it's not just futures and 20 benefits of a new product, right, it's how to sell 21 it, it's the value of it, and it's so much more 22 than, okay, I'm going to teach you how to do a 23 sale, right, I mean. So it's a lot, there's a lot 24 that goes into it doing that analysis, and then 25 you really have to design that program, obviously,	
1 there's a lot of terminology that's used I feel 2 like in the training world and I just don't know 3 what some of it is. 4 A. I'm really passionate, so I'm going 5 to ramble. 6 Q. Clover, so I know a little bit about 7 Clover from like personal experience. 8 A. Sure. 9 Q. But can you tell me a little bit 10 about that technology? 11 A. Yeah. So I was a part of the group 12 who -- when we originally brought it to First 13 Data, I was part of the original group, and, 14 again, it was a great experience. We had code 15 names for it back then before we acquired them. 16 But basically, it was going to change the payments 17 scape and really give our merchants a device that 18 they could use to -- and these are small, at the 19 time it was small merchants -- to really manage 20 their whole business versus just having a credit 21 card machine and they had to go do inventory 22 somewhere else and they had to do their payroll 23 somewhere else. This was putting everything, 24 similar to an iPad, in one location for them to 25 manage their business. So offering our merchants	174	176

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45 (177 to 180)

	177		179
1	Q. Okay. Just so we're clear on the	1	A. Through the whole thing until he
2	record, so what did you -- what illness or disease	2	was -- I guess he was told he had to go out on
3	did you believe that he had or did you learn?	3	leave.
4	A. Throat cancer.	4	Q. Okay. So how often did you hear from
5	Q. Throat cancer?	5	Mr. Barger during this time period?
6	A. Um-hmm.	6	A. Daily.
7	Q. Okay. And you don't recall when you	7	MR. SHEARER: Objection, objection.
8	first learned that information?	8	You may proceed.
9	A. I don't. Maybe the summer. Yeah, I	9	THE WITNESS: I can't remember
10	10 don't want to speculate.	10	honestly. I mean, First Data has access to all of
11	Q. Okay. Did Mr. Barger take any --	11	my work e-mails.
12	well, actually, before I go there, so he told you	12	BY MS. COOPER:
13	about it on a call, I think you mentioned?	13	Q. I'm just asking what you recall about
14	A. I'm thinking -- I probably shouldn't	14	it.
15	15 have said that. I don't remember what it was, but	15	A. I recall that he was always active,
16	16 more than likely, it was a call because I was in	16	quite honestly.
17	17 Cincinnati and he was in Atlanta.	17	Q. Okay. And you mentioned that at some
18	Q. Okay. Did he talk about it on any	18	point, he took leave or went out on leave?
19	other occasion?	19	A. Yeah.
20	A. Maybe to give us an update of his	20	Q. What do you know about those
21	21 progress.	21	circumstances?
22	Q. Okay.	22	A. I just know that we were told it
23	A. Not often.	23	23 was -- I can't remember who was on the call, and I
24	Q. Okay. But he did mention that he had	24	24 may -- there are some things in my files you'll
25	been diagnosed and was seeking treatment?	25	25 see, but I think I had some conversations with
	178		180
1	A. Yeah. I mean, we would ask, of	1	1 Ms. Ordning that she was going to take over in the
2	2 course. I mean, we were concerned about him, like	2	2 interim while Steve was getting better.
3	3 he would be concerned about us.	3	Q. Okay. When was that, about?
4	Q. Okay. Did any employees ever	4	A. I want to say mid November 2016.
5	complain to you or anybody else that you might	5	Q. Yes.
6	have heard about Mr. Barger sharing the details of	6	A. Yeah.
7	his illness?	7	Q. Yeah. Okay. So you found out that
8	A. No.	8	Ms. Ordning was going to take over as interim head
9	Q. Okay. Did you ever go to anybody and	9	of the group?
10	complain that Mr. Barger had been sharing certain	10	A. Um-hmm.
11	details about his diagnosis?	11	Q. What were the first sort of -- I
12	A. No.	12	don't want to say changes or, you know, what did
13	Q. Okay. Did Mr. Barger take any time	13	Ms. Ordning do when she took over as the interim
14	off after he was diagnosed?	14	role?
15	A. There might have been days. I didn't	15	A. I think it was similar to what anyone
16	16 manage his out-of-office or days off, so I	16	16 would do when they're going to take on a new
17	17 wouldn't -- I wouldn't know. He always seemed to	17	17 organization, they want to get to know you, what
18	18 be working.	18	18 you do.
19	Q. Okay. And so what do you mean by he	19	Q. How did Ms. Ordning do that?
20	always seemed to be working?	20	A. We probably had phone calls. Again,
21	A. Even when he was -- you know, we	21	21 I don't want to speculate. First Data has my
22	22 would hear that he's scheduled to go out for	22	22 calendar, they could probably look it up.
23	23 surgery, and he would still be reading e-mails,	23	Q. When Ms. Ordning took over as interim
24	24 responding, getting project updates.	24	head, how did things change in the group?
25	Q. Okay. Do you recall when that was?	25	A. Morale went down. I think there were

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46 (181 to 184)

	181	183
<p>1 a lot of unknown questions on what happened 2 because all of a sudden, you know, our beloved 3 boss was not there. No one was talking like what 4 had happened, how he was. You know, it was kind 5 of like, boom, he's gone.</p> <p>6 Q. I just want to -- I'm talking about 7 November 2016 when he went out.</p> <p>8 A. So am I, yeah.</p> <p>9 Q. I just wanted to make sure.</p> <p>10 A. Um-hmm.</p> <p>11 Q. Okay.</p> <p>12 A. I'm not sure or clear on FMLA laws. 13 I don't know if they cut off e-mail access, I 14 don't know. I know I've been out on leave for 15 having children, and, gosh, I just did not have 16 time to touch e-mails, so I don't know. I don't 17 know.</p> <p>18 Q. Okay. How did -- so you said morale 19 decreased?</p> <p>20 A. Yeah.</p> <p>21 Q. How so?</p> <p>22 A. I think just because it was change 23 and people didn't know -- it was very sudden, and 24 people didn't know what was going on, because 25 Steve would be available, he would be on our Adobe</p>	<p>1 Q. Okay. You said not with your team. 2 Were there issues with other teams?</p> <p>3 A. I don't know. I can't speculate 4 what --</p> <p>5 Q. Okay. What about issues with team 6 members when Ms. Ordning took over as interim head?</p> <p>7 A. I don't know.</p> <p>8 Q. Okay. Are you aware of any issues on 9 your team?</p> <p>10 A. Which team? Our teams changed 11 drastically, so it would --</p> <p>12 Q. So how did the team change, then, 13 when Ms. Ordning took over?</p> <p>14 A. We were downsized quite a bit.</p> <p>15 Q. Okay. By how many people?</p> <p>16 A. I don't know.</p> <p>17 Q. Or if you can give me like a 18 percentage?</p> <p>19 A. I don't know. It was a very 20 stressful time. I don't know. I'm sure First 21 Data can look up in their books the numbers of 22 what they cut.</p> <p>23 Q. Okay. What about it was stressful?</p> <p>24 A. Being responsible for almost -- you 25 know, somewhat responsible for people losing their</p>	
<p>1 Connect session, we set it up specifically for him 2 so that he could -- and I did this myself, so that 3 he could participate, so he could chat with 4 everyone.</p> <p>5 Q. What is Adobe Connect?</p> <p>6 A. It's a virtual connection platform 7 where you can have video, you can have chat, you 8 can do all kinds of things.</p> <p>9 Q. You set this up for Mr. Barger?</p> <p>10 A. I did, um-hmm.</p> <p>11 Q. When was that?</p> <p>12 A. I don't -- I don't know. Sometime in 13 the fall probably of that year.</p> <p>14 Q. Okay. So you talked -- or you said 15 morale dropped. I want to talk about issues with 16 team members. Were there any issues with team 17 members when Barger was head of the group before 18 Ms. Ordning took over?</p> <p>19 A. Not with my team.</p> <p>20 Q. Who do you put into your team, who do 21 you consider?</p> <p>22 A. My instructional developers.</p> <p>23 Q. How many people?</p> <p>24 A. I probably had five or six at the 25 time in Omaha, all over.</p>	<p>182</p> <p>1 jobs and their families.</p> <p>2 Q. Okay. What is a line of business 3 quarterly review?</p> <p>4 A. A line?</p> <p>5 Q. A line -- LOB quarterly review, a 6 line of business.</p> <p>7 A. This was probably -- gosh, okay.</p> <p>8 These were meetings that were set up I believe by 9 Dan Charron, maybe his admin, to get an update 10 from your organization on a quarterly review.</p> <p>11 They were often canceled.</p> <p>12 Q. Okay. Did you ever attend any of 13 these quarterly reviews while Barger was --</p> <p>14 A. I did not.</p> <p>15 Q. You did not?</p> <p>16 A. I helped prepare materials, but I did 17 not attend.</p> <p>18 Q. Okay. Did you ever attend one of 19 these calls when Ms. Ordning oversaw the group?</p> <p>20 A. I did not. I helped prepare 21 materials, but I did not attend.</p> <p>22 Q. Okay. So you've never attended one 23 of these calls with Mr. Barger?</p> <p>24 A. No.</p> <p>25 Q. Okay. So when did you learn that</p>	<p>184</p>

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47 (185 to 188)

	185		187
1	Mr. Barger wasn't going to be returning to work?	1	Let's take the last 5-minute break now.
2	A. I think in January 2016.	2	THE WITNESS: That's good.
3	Q. Okay.	3	(Brief recess.)
4	A. '17.	4	(Thereupon, Kelly Exhibit 24,
5	Q. '17?	5	multiple documents, the top being a 4-page e-mail
6	A. '17.	6	dated 10/2/18 to Gary Eidelman from Julie Kelly,
7	Q. Okay.	7	was marked for purposes of identification.)
8	A. Yeah.	8	BY MS. COOPER:
9	Q. Who told you?	9	Q. So what I'm going to enter as Exhibit
10	A. I believe it was a call with	10	24 -- so you brought a bunch of documents with you
11	Ms. Ordung and Mr. Marino, but I -- can I redact	11	today to the deposition.
12	that because I don't know. I can't remember.	12	A. (Nodding head.)
13	Q. That's fine.	13	Q. I have briefly gone through them. I
14	A. Yeah.	14	have not read every page in here, but I will enter
15	Q. But it wasn't -- was it Mr. Barger	15	the entire stack that you brought as Exhibit 24.
16	who told you that he wasn't coming back?	16	This way we just have one complete copy of all of
17	A. No. It was a conference call. I	17	the documents you brought here.
18	think we were expecting him, and all of a sudden,	18	How did you search your records for
19	we had this meeting instead that said that he	19	documents that were responsive to the subpoena?
20	wasn't coming.	20	A. I just searched. I took each --
21	Q. Okay. You talked a little bit about	21	actually, I took the list that you sent me and
22	22 people lost their jobs during this time period.	22	just went through and searched for what you asked
23	A. (Nodding head.)	23	in each item in my e-mail, my documents.
24	Q. How many people on your team or in	24	Q. Okay. Earlier, you mentioned a cloud
25	25 your group lost their job?	25	that you have. Did you search the cloud?
	186		188
1	A. I don't remember.	1	A. Yeah.
2	Q. Okay.	2	Q. Okay. Did you search your cell
3	A. I'm sure First Data has those	3	phone?
4	numbers.	4	A. Yeah.
5	Q. Okay. But there were people in your	5	Q. Okay. Did you have any text messages
6	group who were termed?	6	that were responsive?
7	A. Sure, um-hmm.	7	A. Not relevant to the case.
8	Q. Do you know why they were termed?	8	Q. Okay. Did you have any text messages
9	A. You know, First Data has cuts all the	9	with Mr. Barger?
10	time. I think they change the name, but	10	A. I might have a couple. I sent him
11	reductions, cuts, I don't know.	11	pictures of my kids.
12	Q. Okay. So they were laid off?	12	Q. Okay. But I don't believe that those
13	A. Yes.	13	were produced here?
14	Q. Okay. They weren't -- what I'm	14	A. No. They weren't in relation to this
15	15 trying to get to is that they weren't termed for	15	case.
16	16 performance-related issues?	16	Q. Okay. But you do have text message
17	A. Well, that might be a part of what	17	communications with Mr. Barger?
18	they use as far as requirements to select the	18	A. I have a couple, sure.
19	people.	19	Q. Okay. So I want you just to, you
20	Q. Okay. But it wasn't some sort of	20	know, don't -- I ask that you don't unclip it so
21	21 policy violation where that person was fired?	21	22 that nothing goes out of order. I just want you
22	A. Right. They didn't go through like	22	23 to take a look and make sure that this looks like
23	an employee performance plan and then get fired,	23	24 the documents that you brought here with you
24	no.	24	25 today.
25	MS. COOPER: Okay. Got it. Okay.	25	MS. COOPER: Can we pause for a

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48 (189 to 192)

	189		191
1 second?		1 Q. Okay.	
2 (Off the record.)		2 A. Oh, you mean like the first time to	
3 (Thereupon, Kelly Exhibit 25, a		3 print them?	
4 multi-page document reflecting from FDC Litigation		4 Q. I don't know how many --	
5 to Julie Kelly, was marked for purposes of		5 A. I don't know. Probably Friday the	
6 identification.)		6 4th or the 6th, I don't know.	
7 THE WITNESS: I mean, it looks --		7 Q. Why did you print it?	
8 (nodding head).		8 A. Because I wanted to see -- I wanted	
9 BY MS. COOPER:		9 to have a copy of what was being asked of me.	
10 Q. Okay. All right. Thank you. We'll		10 Q. Did you send these screen shots to	
11 put this here. I'm going to show you what has		11 anybody?	
12 been marked as Exhibit 25. So here, you can take		12 A. They were on my phone. No, not that	
13 a look at this and tell me what these		13 I'm aware of, no.	
14 communications appear to be.		14 Q. So you didn't send them to anybody	
15 A. So this is the legal hold I was sent		15 else?	
16 on August 4th, 2017 at 5:55 p.m. from an e-mail		16 A. Not that I'm aware of, no.	
17 address FDC Litigation, which I think if you look		17 Q. Not anybody else, but just anybody?	
18 at the back page, there's some First Data names		18 A. (Shaking head.)	
19 listed. And I have this so that I understood		19 Q. Okay. Thank you. Since Mr. Barger's	
20 exactly what I needed to preserve in regards to		20 employment ended at First Data, did you talk to	
21 the Barger case. It does say at the top: Yes or		21 him about any other job opportunities?	
22 no, do you understand the message below and agree		22 A. Did I?	
23 to comply? I never did either. I was actually		23 Q. Yes.	
24 expecting someone to reach out to me.		24 A. For him?	
25 Q. Okay. You received this August 4th,		25 Q. For you.	
	190		192
1 2017?		1 A. I did.	
2 A. That's what it says.		2 Q. Okay. What were those conversations?	
3 Q. Okay. Why does it look like -- why		3 A. I can't recall exactly, but I wanted	
4 can I see 11 percent battery or 11 percent and		4 him to keep me in mind if there might be something	
5 then the battery symbol that says 5:17 p.m.?		5 out there that I would be qualified for.	
6 A. I got it through an application		6 Q. Okay. Why were you looking?	
7 called Good.		7 A. Because I was under new management	
8 Q. Okay. So are these screen shots?		8 that over my entire career in First Data I was	
9 A. They appear to be.		9 being asked to do certain things that I didn't	
10 Q. Okay. When did you screen shot them?		10 feel were correct.	
11 A. 5:17 probably on -- I can't		11 Q. Okay. Did Mr. Barger ever reach out	
12 speculate, but I'm assuming that day.		12 to you with any job opportunities?	
13 Q. Well, the e-mail was sent at 5:55		13 A. No.	
14 p.m.		14 (Thereupon, Kelly Exhibit 26, a	
15 A. Oh, then, yeah, maybe the next day.		15 1-page document reflecting Additional	
16 I don't know, quite honestly.		16 harassment/threats, was marked for purposes of	
17 Q. So why did you screen shot it?		17 identification.)	
18 A. Because I wanted to be clear on what		18 BY MS. COOPER:	
19 was being asked.		19 Q. I'm going to show you what we've	
20 Q. You had the e-mail, correct?		20 marked as Exhibit 26. What is this document?	
21 A. I could not print.		21 A. Oh, this is my cover page for your	
22 Q. Could you print the screen shots?		22 previous exhibit, the litigation, the legal hold	
23 A. I did, yeah.		23 e-mail. It states here: E-mail received on	
24 Q. Okay. So when did you print these?		24 August 4th.	
25 A. Yesterday.		25 Q. Okay.	

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49 (193 to 196)

	193		195
1 A. This just goes in front of that so I		1 A. I must have heard those and I just	
2 know what it is.		2 jotted them down. Typically, I would take more	
3 Q. Okay. It wasn't in that order,		3 formal notes on my computer, but this must have	
4 though, in --		4 just been an ad hoc call.	
5 A. Sorry, I don't know if it got mixed		5 Q. Okay.	
6 up.		6 A. So I'm not sure exactly what those	
7 Q. So you said a cover sheet. Who did		7 are in relevance to.	
8 you send it to?		8 Q. Okay. So where are these notes,	
9 A. This is for me so I know what that's		9 then, kept?	
10 about.		10 A. I just have a notebook. I just keep	
11 Q. Okay. So you never sent this		11 them occasionally for maybe a couple of months --	
12 information to anybody?		12 Q. Okay.	
13 A. No. This is for you.		13 -- and then I pitch them.	
14 Q. Okay. So when you did draft this?		14 Q. So these are notes that you took	
15 A. Yesterday.		15 while you were working at First Data?	
16 Q. Okay.		16 A. Yeah, um-hmm.	
17 A. So you just wouldn't see random		17 Q. Okay. And you still have the	
18 screen shots.		18 originals?	
19 Q. So that's why we have the full stack,		19 A. For this one, yeah. I don't have --	
20 this way we have -- if someone read the		20 I got rid of most of my things. It's been over a	
21 transcript, they might be a little confused about		21 year, but I did go through to see if I had some	
22 how the page was --		22 things that might be of relevance. I don't know.	
23 A. I must have mixed it up or it got		23 Q. So the first page is dated November	
24 caught in the printer.		24 10th, 2016.	
25 Q. I'm just trying to ask the questions		25 A. Um-hmm.	
	194		196
1 just to have something, if someone reads the		1 Q. The second page is November 17th,	
2 record, we know that we're talking about this.		2 2016. The third page doesn't appear to be dated.	
3 A. Yeah. Sorry.		3 A. Yeah, that's why these actually were	
4 Q. Okay.		4 in the notebook like this, (indicating).	
5 (Thereupon, Kelly Exhibit 27, a		5 Q. Okay.	
6 3-page, handwritten document dated 11/10/16, was		6 A. And yeah, I don't know why. I	
7 marked for purposes of identification.)		7 typically had dates and I didn't, and that's the	
8 BY MS. COOPER:		8 only date that I saw close, so I don't know, but	
9 Q. I'm going to show you what we've		9 it looks like this was perhaps my first	
10 marked as Exhibit 27. So what are these three		10 conversation with Ms. Ordning about her taking over	
11 pages?		11 for Steve. I'm not sure if that's her phone	
12 A. These are some notes that I took.		12 number, but it appears that maybe I called her --	
13 The first page looks like it was November 10th of		13 Q. Okay.	
14 2016, looks like it was a conversation between		14 -- and we had a conversation, and	
15 Rhonda Johnson, Justin Stamie, and myself, and I		15 these were just some of the notes that I just	
16 remember Rhonda talking about there was a		16 jotted down while we were talking.	
17 situation, it might have been an e-mail, and		17 Q. Okay.	
18 there's a little bit of frustration with		18 (Thereupon, Kelly Exhibit 28, 1 page	
19 Mr. Barger. And she mentioned they were		19 of e-mails, the top dated 1/13/17 to Julie Kelly	
20 interviewing for two different things. I think it		20 from Robin Ordning, was marked for purposes of	
21 was for Bryan Fricke's backfill because that had		21 identification.)	
22 yet to be filled. And my suggestion was Dawn		22 BY MS. COOPER:	
23 Stewart, that's why her name was there.		23 Q. I'm going to show you Exhibit 28.	
24 Q. But you said embarrassment,		24 What is this document?	
25 frustration?		25 A. This is an e-mail I sent to	

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50 (197 to 200)

	197		199
1 Ms. Ordning of some concerns I had with the team, 2 and this is when we were awaiting for Steve to 3 come back from his leave.		1 MS. COOPER: Okay. Can we pause for 2 one moment?	
4 Q. Okay. So this is not an e-mail that 5 has been printed out?		3 (Off the record.)	
6 A. No. I took a picture of it, and I 7 think I may have done it because I felt -- I just 8 felt a need to take a picture of it.		4 MS. COOPER: We can go back on the 5 record. So at this point, I will -- it is 4:47.	
9 Q. Why?		6 As you know, we were ordered to be done by 5, so I 7 will ask that the receipt which we've talked about 8 today, that you provide a copy of that receipt.	
10 A. Because we were really concerned -- I 11 was really concerned with the leadership of the 12 team at the time --		9 THE WITNESS: Okay. I wrote that 10 down.	
13 Q. Okay.		11 MS. COOPER: Okay. And, again, if 12 you find any additional documents in the search 13 for that receipt, you're always able to supplement 14 your document production that you have produced 15 today. And with that, I will conclude today's 16 deposition. All right.	
14 A. -- and the needs of the team and I 15 just wanted -- I mean, I don't know honestly.		17 THE WITNESS: Okay.	
16 Q. Okay.		18 MS. COOPER: Thank you.	
17 A. I just felt a need to take it. I 18 have a couple of these.		19 (Off the record.)	
19 Q. So it says at the top you forwarded 20 this message on 1/13/2017. Do you recall who you 21 forwarded it to?		20 (Thereupon, Kelly Exhibit 29, a 21 1-page Invoice dated 10/15/18, was marked for 22 purposes of identification.)	
22 A. I don't.		23 MS. COOPER: Okay. So I'm going to 24 enter as the final exhibit, 29. It's the invoice.	
23 Q. Okay. Do you still --		25 BY MS. COOPER:	
24 A. Because I wrote it on -- I don't -- I 25 mean, First Data has all of my e-mails, so if it's	198		200
1 relevant, I'm sure they can find out.		1 Q. The invoice is not -- it's for \$375	
2 Q. Okay. Do you still have the original 3 picture that you took on your phone or whatever 4 device you used?		2 for service for three children for baby-sitting.	
5 A. Probably not.		3 There's no company that's issuing this invoice	
6 Q. Okay. When did you print this image?		4 noted on the invoice.	
7 A. I guess yesterday, but I'm not sure 8 if it's embedded in something.		5 A. Right.	
9 Q. What do you mean?		6 Q. So what company issued this invoice?	
10 A. Like a Word document or something. I 11 don't know.		7 A. So I'm having a friend, a sitter, 8 watch the children.	
12 Q. Okay. Did you delete -- do you 13 recall deleting this after you printed it 14 yesterday from wherever you got it from?		9 Q. Okay. Does this friend have a 10 baby-sitting business?	
15 A. No, I don't know.		11 A. No.	
16 Q. No or I don't know?		12 Q. Okay. Does the friend normally issue 13 invoices for baby-sitting?	
17 A. No, I didn't delete anything.		14 A. No. I drafted that up according to 15 her charges. That's why my name is on that.	
18 Q. Okay. Thank you. You mentioned the 19 receipt from the coffee from August 31st, 2018. I 20 didn't see that when I went through these 21 documents. Do you know if you included that 22 receipt?		16 Q. Okay. Who set the price?	
23 A. I don't think I did.		17 A. They did -- she did.	
24 Q. Okay. But you have it, you said?		18 Q. And so she's charging \$50 an hour for 19 baby-sitting?	
25 A. I do.		20 A. Um-hmm.	
		21 MS. COOPER: Okay. We will enter 22 this as an exhibit, and I will discuss it with 23 First Data, and then we'll be in contact about it.	
		24 THE WITNESS: Okay.	
		25 BY MS. COOPER:	

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51 (201 to 204)

	201	203
1 Q. Actually, what is the name of the	1 STATE OF OHIO)	
2 friend who was baby-sitting?	2 COUNTY OF MONTGOMERY) SS: CERTIFICATE	
3 A. Aspen.	3 I, Lisa M. Conley Yungblut, a Notary	
4 Q. Aspen?	4 Public within and for the State of Ohio, duly	
5 A. Aspen Kelly.	5 commissioned and qualified,	
6 Q. Aspen Kelly?	6 DO HEREBY CERTIFY that the	
7 A. Um-hmm.	7 above-named, JULIE KELLY, was by me first duly	
8 Q. Is that a relative?	8 sworn to testify the truth, the whole truth and	
9 A. Yes.	9 nothing but the truth.	
10 Q. Okay. How is -- you said it was a	10 Said testimony was reduced to writing	
11 friend or a --	11 by me stenographically in the presence of the	
12 A. Yeah, a friend, stepdaughter.	12 witness and thereafter reduced to typewriting.	
13 Q. Okay. All right.	13 I FURTHER CERTIFY that I am not a	
14 A. Those are typical nanny rates.	14 relative or Attorney of either party, in any	
15 Q. Okay.	15 manner interested in the event of this action, nor	
16 (Thereupon, the deposition was	16 am I, or the court reporting firm with which I am	
17 concluded at 4:50 p.m.)	17 affiliated, under a contract as defined in Civil	
18 * * *	18 Rule 28(D).	
19	19	
20	20	
21	21	
22	22	
23	23	
24	24	
25	25	
	202	204
1 I, JULIE KELLY, do hereby certify	1 IN WITNESS WHEREOF, I have hereunto set my	
2 that the foregoing is a true and accurate	2 hand and seal of office at Dayton, Ohio, on this	
3 transcription of my testimony.	3 25th day of October, 2018.	
4	4	
5	5	
6	6	
7	7	
8 Dated _____	8	
9	9	
10	10	
11	11	
12	12	
13	13	
14	14	
15	15	
16	16	
17	17	
18	18	
19	19	
20	20	
21	21	
22	22	
23	23	
24	24	
25	25	

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A	25:14, 140:17	25:18, 56:3, 91:3, 189:17	45:15, 45:16, 50:2, 57:22, 60:13, 66:22, 91:9, 107:19, 131:10, 133:6, 135:5, 138:16, 178:14, 198:13
aback	accounts	addresses	afternoon
28:15	24:3, 25:3	23:17, 24:2, 24:7, 24:11, 24:16	8:7
abide	accusing	adequately	again
54:8, 56:17	202:2	72:9, 72:12, 165:16	27:18, 44:7, 46:8, 56:4, 59:10, 64:2, 70:19, 72:22, 82:5, 88:5, 89:17, 90:18, 92:12, 92:15, 92:17, 98:21, 101:15, 110:24, 112:7, 113:1, 113:10, 115:4, 120:14, 121:14, 126:10, 127:18, 145:15, 146:5, 146:9, 147:23, 148:17, 158:3, 174:14, 176:2, 176:16, 180:20, 199:11
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able	acted	admit	advance
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above	acting	admitted	adventure
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above-mentioned	action	adobe	adverse
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above-named	active	adult	advice
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abruptly	activities	advance	174:14, 176:2, 176:16, 180:20, 199:11
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absolutely	activity	adventure	18:17, 40:10, 40:13, 41:20, 75:21, 78:4, 85:6, 98:24, 99:3, 102:9, 121:6
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accommodate	additional	affirming	
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account		after	
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